(21,418.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 296.

VICENTE GARCIA GAVIERES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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R. G. No. 4377.

Supreme Court of the United States, October Term, 1908.

VICENTE GARCIA GAVIERES, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

In Error to the Supreme Court of the Philippine Islands.

Proceedings Had in the Court of First Instance of the City of Manila and the Supreme Court of the Philippine Islands.

THE UNITED STATES
vs.
VICENTE GARCIA GAVIERES.

Be it remembered that heretofore, to-wit, on the 25th day of June, A. D., 1907, in the Court of First Instance of the City of Manila, came Jesse George, Acting Prosecuting Attorney of the City of Manila, P. I., and filed in the said court an information signed and sworn to by him against Vicente Garcia Gavieres, which said information is in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

THE UNITED STATES, Plaintiff,
vs.
VICENTE GARCIA GAVIERES, Defendant.

Acts of Contumely and Insults Against Public Official and Agent of the Authorities.

Information.

2 The undersigned accuses Vicente Garcia Gavieres of the crime of calumniating, outraging and insulting by word of mouth and in his presence, a public official and agent of the authorities in the exercise of his office, committed under the following circumstances:

That on or about the 20th day of June, 1907, in the City of Manila, Philippine Islands, one Captain Jose Crame was then and there a public official and agent of the authorities and Captain of Police of the City of Manila, then and there engaged in the discharge of his duties as such Captain of Police; that while the said Jose Crame was then and there engaged in the discharge of his duties as afore-

said, the accused, Vicente Garcia Gavieres did then and there wilfully, unlawfuly and feloniously address and apply to the said Jose Crame the following calumnious, outrageous and insulting words, and did then and there insult and outrage the said Jose Crame by deed, in this, that the said accused, Vicente Garcia Gavieres, did then and there publicly motion to, and seize with his hand the private parts of him, the said accused, Vicente Garcia Gavieres, and did then and there in all outrage and indecency make the motions of titillating the same and did then and there direct and apply to the said Jose Crame the following outrageous, insulting and indecent terms "Usted me toqu los huvos," which being translated into the English language means "You catch (or touch) my balls." That the indecent, outrageous and insulting words and deeds aforesaid were committed under circumstances which, by their nature, render them particularly ignominious, and the said words were spoken in a public street car in the presence and hearing of both men and women then and there passengers on said car. Contrary to law.

(Signed) JESSE GEORGE,
Acting Prosecuting Attorney.

3 Subscribed and sworn to before me this 25th day of June, 1907, in the City of Manila, Philippine Islands, by C. L. Bouvé, Assistant Prosecuting Attorney.

(Signed) CHARLES H. SMITH,
Judge Court of First Instance.

Witnesses:	Addresses:
Roque Sanchez,	Paco Station.
Juan de la Cruz,	Calle C. Malate, Interior. Care Street Car Co.
Angel Gliceria,	Libertas paper.
Jose Crame.	Paco Police Station.

A preliminary investigation has been made under my direction having examined the witnesses under oath in accordance with the provisions of Section 39 of Act 183 (Manila Charter), as amended by Section 2 of Act 612 of the Philippine Commission.

(Signed) JESSE GEORGE,
Acting Prosecuting Attorney.

Subscribed and sworn to before me this 25th day of June, 1907, in the City of Manila, Philippine Islands, by C. L. Bouvé, Assistant Prosecuting Attorney.

(Signed) CHARLES H. SMITH,
Judge Court of First Instance.

4 Afterwards, towit, on the 28th day of June, 1907, the Honorable Charles H. Smith, one of the Judges of the Court of First Instance of the City of Manila, made the following order:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila. Part II.

#3232.

THE UNITED STATES
vs.
VICENTE GARCIA GAVIERES.

Acts of Contumely and Insults Against a Public Official and Agent of the Authorities.

Upon examination of the complaint filed by the Prosecuting Attorney of the City of Manila against the accused herein and in view of the result of the investigation made by and in the presence of the said Prosecuting Attorney who filed the said complaint and considering that the crime therein charged has been committed and that there is reasonable ground to believe that the accused is guilty thereof;

It is hereby ordered that the said Vicente Garcia Gavieres be arrested and duly informed of the complaint against him.

Manila, June 28, 1907.

(Signed) CHARLES H. SMITH,
Judge of the Court of First Instance, Manila.

On the same day, towit, June 28, 1907, the Court made the following order:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

3232.

THE UNITED STATES
vs.
VICENTE GARCIA GAVIERES.

Order of Arrest.

To any Officer of the Law:

You are hereby ordered to arrest Vicente Garcia Gavieres, said to be in the city of Manila, who has been charged before me with the crime of contumely and insults against a public official and agent of the authorities and to bring him before me as soon as possible to be dealt with according to law.

Manila, June 28, 1907.

(Signed) CHARLES H. SMITH,
Judge Court of First Instance, Manila, Part II.

Endorsed.

Return to the Order of Arrest.

UNITED STATES OF AMERICA,
City of Manila:

On this date I have arrested Vicente G. Gavieres and turned him over to the proper court.

Manila, June 28, 1907.

(Signed) CARL B. HARD,
Secret Service.

Sheriff fees: P1.24.

Endorsed.

This 28th day of June, 1907, the defendant gave bail in the sum of 500 pesos by his sureties Francisca Alvarez, and Casimira
6 Miranda, both residents of the District of Paco, Manila.

(Signed) J. McMICKING,
Clerk of Court.

Thereafter, towit, on the 29th day of June, 1907, counsel for defendant filed the following exception to the complaint:

(Court and Title.)

Now comes the undersigned attorney for defendant, and excepts to the complaint on the ground:

That the complaint or information is not in conformity with the essential requisites prescribed by law.

Argument.

The complaint in this case charges the commission of the crime of contumely "injurias," which is subject to an especial and definite procedure.

The law in force prior to the promulgation of General Orders No. 58, towit, the Criminal Compilation, as modified by the Royal Decree of May 6, 1880, which governed criminal procedure in these Islands, being considered as suppletory law, contained the following direction to the Courts of Justice in section 753:

"No complaint for insults or calumny to a private person shall be allowed unless a certificate is filed showing that an act of conciliation has been first had between the complainant and the accused and that the parties failed to arrive at an understanding, or that it was sought without effect."

Further, the Act of September 14, 1882, provided (section 804) as follows:

"No complaint for insults or calumny to a private person shall be allowed unless a certificate is filed showing that an act
7 of conciliation has been first had between the complainant and the accused, or that the same was sought without effect."

Such was the law prior to the promulgation of General Orders No. 58.

General Orders No. 58, section 1, reads in part as follows:

"But existing laws on the same subject shall remain valid except in so far as hereinafter modified or repealed expressly or by necessary implication."

There is no provision either in General Orders No. 58 or in Act No. 194, which expressly or tacitly modifies or repeals the criminal compilation as reformed by the Royal Order of 1880, and the Act of September 14, 1882.

It will not do to say that the alleged aggrieved party is a public authority and therefore exempt from the required act of conciliation.

Such contention can not be seriously maintained. The last paragraph but one of section 467 of the Penal Code reads as follows:

"For the purposes of this article the sovereigns and princes of friendly or allied nations, their diplomatic agents, and foreigners with a public character that according to treaties should be included in the provision, shall be considered as authorities."

For the reasons above set forth, the undersigned attorney in behalf of the accused prays the court to dismiss the complaint on the ground that no certificate to the effect that the act of conciliation has been first had having been filed therewith, the same does not comply with the essential requisites prescribed by law, the
8 costs to be *de officio*.

Manila, June 29, 1907.

(Signed) DR. M. G. GAVIERES.

Received copy:

(Signed) JESSE GEORGE.

Assistant Prosecuting Attorney.

Thereafter, towit, on July 5, 1907, the acting prosecuting attorney of the City of Manila moved the court to overrule the demurrer of the accused to the complaint for the reason set forth in the argument attached to his motion, which said argument is as follows:

Argument.

The demurrer to the complaint herein is based solely upon the ground that the complaint does not conform substantially to the prescribed form. Section 6 of general order 58 provides:

First. That the complaint must show the name of the defendant if his true name is known. This has been done, and the accused is charged under the name of Vicente Garcia Gavieres.

Second. It must designate the crime or public offense charged. The crime is designated both in the caption of the informtaion and in the first par-graph of the body of the said information. In the caption the crime is designated as acts of contumely and insult against a public official and agent of the authorities. In the first paragraph the crime is designated more specifically as "The crime

of culminating, outraging and insulting by word of mouth, and in his presence, a public official and agent of the authorities in the exercise of his office." This designates clearly the offence defined and punished under article 257 of the Penal Code.

Third. Said section 6 provides that the complaint must state the acts or ommissions complained of as constituting the crime or public offence in ordinary and concise language, not necessarily in the words of the statute, but in such form as to enable a person of ordinary understanding to know what is intended, and the Court pronounce judgment according to right. The acts of the accused constituting the offence are set forth specifically and at length in the body of the complaint after the caption.

Fourth. The complaint must show that the offense was committed within the jurisdiction of the Court and is triable therein. The information alleges that the offence was committed in the City of Manila, Philippine Islands, and the offence stated is clearly one over which the Court of First Instance has jurisdiction.

Fifth. The name of the person against whom or against whose property the offence was committed, if known, must be stated. The name of the person against whom the offence is committed is stated in the complaint as Jose Crame, who is alleged to have been a captain of police of the City of Manila at the time the offence was committed.

The provisions of the Spanish Code of Criminal procedure section 753 and 804 which require that an act of conciliation must have been had or attempted to be had by the complainant before he can present a complaint, apply only to the private crime "injuria," articles 452 to 467 of the Penal Code, and have no application to the crime of contumely and insult against public officials and agents of the authorities defined and punished by articles 253-257 of the Penal Code. The former as has been indicated is a private offence, and the latter is a public offence. The latter must be presented only at the instance of the government. In the former the private party presenting the complaint must prior thereto attempt a reconciliation with the party who has injured him; but in the latter case, as in the case of all public offences, the government is not required to attempt, or effect, a reconciliation. The offence is against the public; though the accused might make amends to the party actually injured and secure his pardon, he would not thereby extinguish the public offence that he has committed. The sections cited and quoted by the accused in the argument appended to his demurrer indicate clearly this distinction. Article 804 cited provides "No complaint for abusive language or slander of private persons shall be admitted against the complainant who presents a certificate of having affected or attempted an act of reconciliation with the accused. This — will be seen applies only to private parties. The offence charged is under chapter 5 of title 3 of the Penal Code and is as much a public offence as the offence defined in chapter 4 of the same title, and is in fact a crime very similar thereto. In the case of the United States against John M. Flemister, reported in

volume 4 of the Official Gazette, on page 289, the accused was found guilty by the Lower Court under article 252, or the last article of chapter 4 of title 3. The supreme court modified the sentence declaring that the acts proven showed the accused to be guilty
11 under article 250, or the second article of the same chapter.

The complaint in the case charged the accused with attacking an agent of the public authorities, towit: Feliciano Celimin, a police officer of the City of Manila, and it will be seen that the Supreme Court found the accused guilty under paragraph 2 of article 250 of the offence of an attempt against a public official. If a mere police officer is a public official and not a private party much more would a police captain, who is the party charged to have been offended in the case at bar — a public official.

It is respectfully submitted that the demurrer should be overruled and the defendant required to plead.

(Signed) JESSE GEORGE,
Acting Prosecuting Attorney.

Thereafter, towit, on the 6th day of July, 1907, counsel for defendant submitted the following additional grounds of demurrer: "(1) That the complaint charges more than one offense for which the laws in force prescribe separate and distinct penalties. (Par. 3, sec. 21, G. O. 58.)

Argument.

In the caption of the complaint the crime is designated as "*Acts of contumely and insults against a public official and agent of the authorities.*

Contumely is the crime defined and penalized in Chapter 2, title 10, book 2 of the Penal Code.

Calumny is *the false imputation of a crime subject to prosecution at the instance of the Government, and is included*
12 *in Chapter 1, title 10*, book 2 of the Penal Code.

Chapter 5, title 3, book 2 of the Penal Code relates to *acts of disrespect, insults, acts of contumely and threats against the authorities and insults and threats against their agents and other public officials.*

It would appear from what has been said that three crimes have been committed, which, although *identical*, as the Prosecuting Attorney well says, should not, because of their identity, be confused; nor can, by reason of that identity, a single offense be prosecuted as three separate crimes; in other words, assuming that there were three crimes committed, the same act can not be the subject of three separate prosecutions, for it is not the identity that the law punishes, but the concrete unlawful act therein defined.

The lengthy complaint filed against the accused states that the crime consisted in the utterance of the words quoted therein as spoken by the accused.

From those words it can not be inferred that the accused thereby imputed to the alleged aggrieved party *the commission of a crime which may be prosecuted by the Government at its own instance* so as to make him guilty of the crime of *calumny*.

Discarding, therefore, the crime of *calumny* from our discussion, we shall proceed to examine the charge of "disrespect, etc."

The Prosecuting Attorney himself drafted the complaint and filed the same in the Court of First Instance, duly signed and sworn to by him.

The caption of that complaint is as follows: "Acts of contumely and insults against a public official and agent of the
13 authorities.

It is not reasonable to suppose that the prosecuting attorney has confused, or forgotten the distinction between the crimes of *aggravated contumely* and *acts of disrespect* if it was his intention to classify the offense as such, so that we may earnestly admit the identity which he claims exists between the two crimes.

The Prosecuting Attorney has added the word "aggravated" which does not appear in Section 257 of the Penal Code, under the chapter relating to "Acts of disrespect, etc.," wherein he now seeks to include the offense, but in section 457 of the Code which refers to *grave acts of contumely* as the prosecution has *generally, genuinely* and *specifically* termed the offense.

There is no doubt that it was the intention of the prosecuting attorney when he filed the complaint to charge the defendant with the crime of *grave contumely*. This assertion is corroborated by the complaint previously filed by the alleged aggrieved party in the Municipal Court of this City.

The Prosecuting Attorney can not be said to be so wanting in knowledge in regard to the classification of crimes, that he may be permitted to charge one offense for another or that we may excuse his lack of accuracy in the classification of the crime as we probably would in the case of a private individual.

The complaint charges two crimes, towit, *grave contumely* and *disrespect*. The former is defined and punished in chapter 2, title 10, book 2 of the Penal Code and the latter in chapter 5, title 3, of the same book and Code. Being in distinct and separate chapters and books of the Penal Code, they must be considered as distinct and separate offenses.

14 The penalty prescribed for the crime of grave contumely is that of banishment and fine and that for the crime of disrespect, arresto mayor (imprisonment not to exceed six months).

2. That the complaint or information does not conform to the prescribed form. (G. O. 58, Sec. 21, par. 2.)

Argument.

It thus appears that the only offense actually charged in the complaint is that of grave contumely which is made to consist in the utterance of the words quoted therein. We shall only look to these words in order to ascertain their meaning.

Contumely being every expression pronounced or action executed in dishonor, discredit or contempt of another person, (Sec. 456 of the Penal Code) it is evident that the offense, consisting, as alleged by the Prosecuting Attorney in certain *expressions* pronounced by the accused and in *certain actions* executed by him in *dishonor,*

discredit or *contempt* of *another person*, it is fully covered by the provisions of Chapter 2, title 10, book 2, and not in Chapter 5, title 3 of the Penal Code.

In Chapter 3, title 10, book 2 of the Penal Code it is provided: "No one shall be punished for calumny or contumely unless upon complaint of the offended party, except when the offense is directed against, etc."

The last paragraph but one of that section provides:

"For the purposes of this article the sovereigns and princes of friendly or allied nations, their diplomatic agents, and foreigners with a public character that according to treaties should be included in this provision, shall be considered as authorities."

As may be seen, the law requires that the crime of grave contumely be prosecuted upon complaint and not upon information, and the only person who has a right under the law to institute such prosecution is the offended party.

Information is what the Prosecuting Attorney calls the
15 paper filed by him, whereas the alleged offended party, as stated therein, is one José Crame who nowhere appears to have made oath to the information.

Section 4 of General Order No. 58 provides: "complaint is a sworn written statement made to a court or magistrate that a person has been guilty of a designated offense."

Section 5 of the said General Order provides: "An information is an accusation in writing charging a person with a public offense, presented and signed by the Promotor Fiscal or his deputy and filed with the clerk of the court."

A complaint is therefore entitled different from an information, and one can not be taken for the other, and certainly not by the prosecuting attorney.

The law requiring that the crime of grave injuries be prosecuted upon complaint, and not upon information, and this being an essential requisite, the accusation does not conform substantially to the prescribed form.

The law requiring further that the complaint be filed and the prosecution conducted by the offended party himself and there being nothing to show that this requirement has been complied with, we contend that the same does not conform substantially to the prescribed form. (Par. 2, Sec. 21, Gen. Order No. 58.)

3. And finally, that the offense charged is not within the jurisdiction of the Court and that the complaint contains averments which if true would constitute a legal justification or excuse. (Sec. 21, pars. 1 and 5 of Gen. Order No. 58.)

Argument.

Jeopardy.

16 The accused in this case has already been convicted or placed in jeopardy upon a former complaint or information for the same offense. (Sec. 26, G. O. 58.)

Said General Order provides as follows:

"SEC. 26. When a defendant shall have been convicted or acquitted or once placed in jeopardy upon an information or complaint, the conviction, acquittal, or jeopardy shall be a bar to another information or indictment for the offense charged, or for an attempt to commit the same, or for a frustration thereof, or for any offense necessarily therein included of which he might have been convicted under such complaint or information."

The Act of Congress of July 1, 1902, Sec. 5, par. 3 reads in part as follows: "and no person for the same offense shall be twice put in jeopardy of punishment."

The defendant was convicted by the Municipal Court of the City on the 25th of June, last, of the same offense with which he is now charged before the Court of First Instance, the Municipal Court having sentenced him to pay a fine of 25 pesos, which he immediately paid.

The case of the United States vs. John M. Flemister, relied upon by the Prosecuting Attorney, besides not being reported in the volume and page of the Official Gazette cited by him, has no application to the case at bar. The case of Flemister was, as he says, for "assault upon an agent of the authorities" and no sections of the Penal Code under which this prosecution is brought relate to 'Acts of disrespect and grave contumely.'

For the foregoing reasons we insist upon our former petition and pray the Court in behalf of the accused that the complaint be dismissed, without costs.

Manila, July 6, 1907.

Respectfully submitted.

DR. M. G. GAVIERES,
17 *Attorney for Defendant.*

Received copy, this 6th day of July, 1907.
(Signed) JESSE GEORGE,
Acting Prosecuting Att'y.

On the 11th day of July, 1907, the Assistant Prosecuting Attorney for the City of Manila filed his answer to the foregoing demurrer as follows, towit:

(Court and Title.)

Answer to Demurrer.

Appears now C. L. Bouvé, Assistant Prosecuting Attorney for the City of Manila, and in answer to the demurrer presented in this cause by the accused through his Counsel, says:

I.

Counsel for the accused attempts to show in his argument in support of paragraph 1 of the demurrer—which reads: That in the information more than one crime is charged, for which the laws in force provide separate penalties for the various acts which are the object of the complaint or information"—that the crimes charged are

two, towit (1) Grave Acts of Contumely and (2) Insults and Contempt shown to the Authorities.

The fact that Counsel alleges that these two crimes are charged indicates that he has taken it for granted that when a grave act of contumely against any person whomsoever is committed, it must be committed under those circumstances mentioned only in Articles 456, 457, 458, 459 and 460 of the penal code and that they must necessarily exist totally apart from acts of contempt or insults against authorities set out in chapter 5 of title 3 of the code with the general heading of crimes against public order. This would necessarily be so, were it not for the fact that Article 254 of said chapter 5 especially legislates and provides penalties for calumny, insults, contumely or threats of any kind directed to or against a public official. Article 257 likewise provides a special penalty for persons who outrage, insult or threaten, by deed or word, public officials or agents of the authorities. Article 254 makes the same distinction between slight and grave acts of calumny or contumely that is made in Articles 456 and 457, that is to say, in Article 254 the two classes of calumny and contumely are distinctly set out with the penalties to be inflicted on the perpetrator of the crime set out under 254, that is, the crime against the public official.

18

The Spanish term for contumely, used in the Code throughout, is "injuria". Article 257 which must be construed in connection with 254 of the same Chapter and title, contains this word, which can only be construed in its full legal sense as explained and set out in the code. Article 254 refers to calumnious or contumelious statements made by a public official to his superior. Article 257 refers to persons who use calumnious or contumelious expressions toward public officials or agents of the authorities.

In the case at bar, the accused is a private person and is charged with having used gravely contumelious statements directed against a public official and agent of the authorities. That the use of such expressions directed against a public official or agent of the authorities by a private person is regarded as a distinct crime complete in itself, and moreover one which is not of a private nature, must be inferred, first, from the fact that there is no provision added to the effect that this crime is of a private nature, such as is added in chapter 3 of title 10 to chapters 1 and 2 of title 10, and, second, that article 257 is punished by the severe penalty of imprisonment, whereas article 458 is punished only with banishment and fine. Were it not for the articles contained in chapter 5 of title 3 of book 2 of the code, the contention of counsel for the accused to the effect that the information charges the accused with having committed two crimes, to wit, contumely and acts of contempt and insult directed against the authorities, might have some force; but the fact that the code sets out as a distinct crime the combination of certain acts which alone and mutually unsupported exist as offenses duly penalized, is enough to prove beyond any doubt whatsoever the intention of the legislator to consider this combination of acts as a distinct offense and to penalize it as such.

19

II.

As the argument urged in support of the second contention in the demurrer, towit, that the information has not been drawn up as required by law, is based on the false premise that the crime charged in the information constitutes an offense entirely distinct from that which is actually charged, no further argument on the part of the undersigned is deemed necessary, inasmuch as it has already been shown that the crime of injurias graves has nothing in common with the crime charged.

III.

The third contention in the demurrer is that the accused was tried and found guilty in the Municipal Court of the crime alleged
20 to be charged in the complaint, that is to say, it is urged that the accused was found guilty of the crime of "injurias graves" by the lower Court and fined twenty-five pesos (P25). On the face of it, this statement is not sound. The grave act of calumny alleged to be charged is punishable, according to the second paragraph of article 458 with the penalty of banishment in its minimum to medium degree and a fine of 325 to 3,250 pesetas.

The Municipal Court, by virtue of act of the Commission 183 and subsequent amendments, has only such powers and only such jurisdiction as are especially accorded to it by virtue of that act and the amendments which follow it. Nowhere in the laws of the Commission is any legislation to be found by which the Judge of the Municipal Court has the power to inflict upon one who is accused and brought before him the penalty of banishment in any degree whatsoever, and moreover the limit of the fine which may be imposed by the municipal Judge is one thousand (1,000) pesetas, which falls far below the limit established in the second paragraph of article 458. In other words, the Municipal Court has in no sense any jurisdiction over a person accused of the crime of injurias graves. If the accused was fined by the Municipal Court Judge for the commission of the act of which he is accused in the information in the case at bar, it must necessarily have been by virtue of an ordinance of the City of Manila. Had the accused been charged with and acquitted of the crime of injurias graves by the Municipal Court, this would constitute no bar to a second prosecution for the same offense in this Court, as a trial conducted by a court having
21 no jurisdiction over the accused cannot place him in jeopardy. Were he sentenced to imprisonment by the Municipal Court on the charge of injurias graves, his petition for a writ of habeas corpus would unquestionably be granted. If, as Counsel for the accused contends, he was convicted and sentenced to pay a fine of twenty-five (25) pesos in the Municipal Court, it must have been for the violation of a city ordinance. That the violation of such an ordinance consisted in acts which constitute the crime with which he is charged in this court and on which the information in this case is brought, creates no bar to his prosecution for the same act in this court is finally and indubitably established by a line of decisions by the Supreme Court of these Islands, the mention of one

of which will be sufficient for the purposes of this answer. In the case of the United States vs. Flemister, Official Gazette Volume 4 Page 289 (English Edition), the Court held that one who is convicted or acquitted under a complaint filed in the Municipal Court of a City, charged with an offense resulting from certain acts in violation of a municipal ordinance, can not plead such conviction or acquittal in bar of an action brought in the Courts of First Instance of the State for an offense under the provisions of the penal code resulting from the same acts. In the one instance the acts result in an offense against a municipal ordinance, while in the other the acts result in an offense against the State and are punishable under the laws of the State.

For the reasons above set forth, the undersigned respectfully asks that the supplemental demurrer in this case be overruled.

(Signed) C. L. BOUVÉ.
Assistant Prosecuting Attorney.

22 Thereafter, towit, on the 17th day of July, 1907, counsel for defendant filed the following motion:

(Court and Title.)

Now comes the defendant, through his attorney, and states:

1. That on the 28th day of June, last, a complaint sworn to by the Prosecuting Attorney was filed in the above entitled case against the accused herein.

2. That on the 1st instant counsel for defendant excepted to said complaint.

3. That an answer to the said exception was filed by the Prosecuting Attorney on the 5th instant.

4. That the trial of this case having been set for the 6th instant (without the defendant having been notified of the action of the court upon his demurrer) before trial and before the arraignment of the accused, the undersigned filed a supplement to his former demurrer.

5. That on the — day the Prosecuting Attorney filed his answer to the said supplementary demurrer.

6. That a sufficient length of time has elapsed and defendant has not been notified of the action of the court either upon the original or the supplementary demurrer.

7. That section 15, paragraph 7 of General Order No. 58 under the heading "Rights of the accused during the trial", provides: "7. Have a speedy and public trial".

Wherefore the undersigned attorney prays the court to pass
23 upon and decide defendant's demurrer to the complaint.

Manila, July 17th, 1907.

Respectfully submitted.

(Signed) DR. M. G. GAVIERES.
Counsel for Defendant.

Thereafter counsel for defendant filed the following petition:

(Court and Title.)

Now comes the defendant through his attorney and respectfully asks the court to note his exception to the order (not yet notified) overruling his demurrer to the complaint in this case.

Manila, July 20, 1907.

(Signed) DR. M. G. GAVIERES.

Received copy:

(Sgd.) JESSE GEORGE.
Asst. Pros. Att'y.

Thereafter and on the 25th of July, 1907, the court entered the following order:

(Court and Title.)

Upon examination of defendant's demurrer to the complaint and considering that the same is not well taken and that the complaint conforms to the requirements of the statute.

It is ordered that the said demurrer be and the same is hereby overruled.

It is further ordered that defendant plead to the complaint and that the case be set for trial as soon as possible.

Manila, July 25, 19-.

24 (Signed) NEWTON W. GILBERT, *Judge.*

Thereafter, towit, on the 27th day of July, 1907, counsel for defendant duly excepted to the order of the court overruling his demurrer to the complaint.

Thereafter, towit, on the 29th day of July, 1907, the defendant was duly arraigned in the Court of First Instance of the City of Manila, before the bar of said court and pleaded "not guilty", setting up at the same time the defense of twice in jeopardy.

Thereafter, towit, on the 31st day of July, 1907, defendant filed the following answer to the complaint:

(Court and Title.)

Now comes Vicente Garcia Gavieres, the accused in the above entitled case and answering the complaint states:

"That having been heretofore convicted of the crimes with which he is now charged, he is not guilty because he is in jeopardy."

Wherefore he prays the court that the complaint be dismissed, without costs.

Manila, July 29, 1907.

Respectfully,

(Signed) V. GARCIA GAVIERES.

Thereafter, towit, on the 7th day of August, 1907, a subpoena for witnesses was duly issued out of said court.

25 There follows a complaint filed in the Municipal Court of the City of Manila by one José de Crame, which said complaint reads:

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Municipal Court of the City of Manila.

THE CITY OF MANILA, Plaintiff,
vs.
VICENTE G. GAVIERES, Defendant.

For Violation of a City Ordinance. Case No. 21548. Age 42 Years. Nationality—Spanish.

The undersigned accuses Vicente G. Gavieres of a violation of an ordinance of the City of Manila, as follows:

That the said defendant on or about the 20th of June, 1907, in the City of Manila, Philippine Islands, wilfully and unlawfully in a public street car and in the presence of numerous persons, including ladies, conducted himself in a reckless, indecent and discourteous manner in this; that the said accused then and there seizing with his hands his private parts, told one Capt. Crame, "touch my balls". In violation of Sect. 2 Ordinance No. 28 of the Municipal Board, contrary to the ordinances of the City made and provided.

(Signed) JOSÉ DE CRAME.

Subscribed and sworn to before me this 21st day of June, 1907.

(Sgd.) TIMOTEO T. MERCADO,
Clerk of the Municipal Court of the City of Manila.

Bail P30.00.

Witness:
CAPTAIN JOSÉ DE CRAME.
Address Precinct No. Six.

26 Endorsed.

P25. At the request of the defendant I hereby certify that the foregoing is a true and correct copy of its original.

(Signed) MARCELO A. TAN,
Deputy Clerk, Municipal Court, City of Manila.

Revenue stamp 20¢.

Then follows a certified copy of the receipt of the Clerk of the Municipal Court for the sum of twenty-five pesos, the same being the fine imposed by the court upon the accused, V. G. Gavieres.

Thereafter, towit, on the 16th day of August, 1907, Mr. C. L. Bouvé, Assistant Prosecuting Attorney of the City of Manila, and Dr. M. G. Gavieres, as counsel for accused, signed and filed the following stipulation.

(Court and Title.)

The undersigned, in behalf of the Government and the defendant, respectively, stipulate as follows:

First. That on the 20th day of June, 1907, the accused was tried and convicted in the Municipal Court of the City of Manila upon the following complaint: "The United States of America, Philippine Islands. In the Municipal Court of the City of Manila. The City of Manila, Plaintiff, vs. Vicente G. Gavieres, Defendant. For violation of a city ordinance, Case No. 21548. Age 42 years. Nationality, Spanish. The undersigned accuses Vicente G. Gavieres of a violation of an ordinance of the City of Manila, as follows: That the said defendant on or about the 20th of June, 1907, in the City of Manila, Philippine Islands, wilfully and unlawfully, 27 in a public street car and in the presence of numerous persons, including ladies, conducted himself in a reckless, indecent and *id*discourteous manner in this: that the said accused then and there seizing with his hands his private parts, told one Capt. Crame, "touch my balls." In violation of Sect. 2, Ordinance No. 28 of the Municipal Board, contrary to the ordinances of the City made and provided. Subscribed and sworn to before me by Jose Crame."

Second. That the defendant has paid the fine imposed by the Municipal Court in its judgment under the above complaint, the receipt for which is as follows: P25.00—June 25th, 1907. Received of Vicente G. Gavieres the sum of twenty-five pesos, the same being fine imposed in the Municipal Court.—Case No. 21548."

Third. That on the 25th of the same month the complaint in this case was filed.

The foregoing facts are agreed upon and admitted by counsel for the Government and the accused respectively.

Manila, August 16, 1907.

For the accused:

Respectfully submitted:

(Signed) DR. M. G. GAVIERES,
His Attorney.

For the Government:

(Signed) C. L. BOUVE,
Asst. Pros. Atty.

Then follows brief of counsel for defendant.

Thereafter, towit, on the 23rd of August, 1907, the Court made the following order:

(Court and Title.)

"After examining defendant's motion wherein he alleges that he has been placed twice in jeopardy, and considering that his
28 claims should be rather the subject of proof during the trial.

It is hereby ordered that the said motion be, and the same is overruled, and the case set for trial as soon as possible.

Manila, August 23, 1907.

(Signed) JUAN SUMULONG, *Judge.*

Endorsed.

I certify that the accused in this case gave bond appearing on page 177 of book No. 1, to the satisfaction of the court, for the purpose of his appeal.

Manila, September 3, 1907.

(Signed) J. McMICKING, *Clerk.*

Thereafter and on the 2nd day of September, 1907, a subpoena for witnesses was duly issued out of said court.

And thereafter, towit, on the 2nd day of September, 1907, the said defendant, Vicente Garcia Gavieres, was duly tried before the Hon. Newton W. Gilbert, one of the Judges of the Court of First Instance of the City of Manila, and the following testimony was given:

29 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

Criminal Case No. 3232.

THE UNITED STATES
versus
VICENTE GAVIERES.

This case was called for trial before Hon. Newton W. Gilbert, on September 2nd, 1907.

Appearances:

C. L. Bouve, Assistant prosecuting attorney, for the government.
Agustin Gavieres for the defense.

Mr. Gavieres, attorney for defendant, raises the question of jeopardy, as the defendant has been tried in the Municipal Court for the same offense.

The COURT: The conviction of the facts stated in the Municipal Court for a violation of a municipal ordinance does not constitute former jeopardy in the sense that it precludes the trial of the defendant for perhaps the same acts, alleged to be a violation of same

article of the Penal Code, which is a general law applicable to the Philippine Islands.

Mr. GAVIERES: Exception to the ruling of the court.

30 JOSE DE CRAME, witness for the government, after being duly sworn, testified as follows:

I am a Captain of the police, live in Manila.

Direct examination by Mr. BOUVE:

Q. What was your official position, if any, on June 20, 1907?
A. Captain of Police, district of Paco.
Q. Do you know the accused in this case?
A. Yes sir.
Q. Did you see him on or about that date?
A. Yes sir.
Q. Where was he when you saw him?
A. I saw him in the City Hall, Police Department.
Q. Did he say anything to you in the City Hall at that time?
A. No sir.
Q. Did you see him at any other place on that day?
A. Yes sir, on Calle Concepcion.
Q. Did he say anything to you in the street?
A. Yes sir.
Q. Did you see him in any other place that day besides the street?
A. Yes sir, in the street car.
Q. Were you in that street car?
A. Yes sir.
Q. What were you doing on the car, that is when you were on the car were you riding for pleasure or were you on duty?

Mr. GAVIERES: Object to the question as it is leading.

31 The COURT: Sustained.

Q. What were you doing in that car?
A. I was going to my station.
Q. Why were you going to your station?
A. I came from the City Hall and after that went to the City Hall.
Q. What time of the day was this?
A. Between four and five in the afternoon.
Q. Were you off duty at that time?
A. No.
Q. Is Calle Concepcion in Manila?
A. Yes sir.
Q. Did the accused state anything to you in the street outside of the car?
A. No sir.
Q. Did he say anything to you in the car?
A. Yes sir.
Q. State fully what he said to you when you were in the car and state what he did, if anything, and make your statement detailed?

A. I was on the platform in front of the car on the gate side. Then Mr. Gavieres came up and when he put his foot on the steps, turning to me he said, "touch my balls," holding in his right hand his private parts.

Q. Did he make any motion with his right hand?

A. Yes sir, his right hand was holding his private parts, moving them. While he was saying this he was getting inside the car.

32 I then went after him inside the car and arrested him. I made him get off the car and took him to the Luneta Police Station.

Q. When he made this remark what was the tone of voice in which he made it?

A. Natural tone.

Q. Many people in the car?

A. Inside many—on the platform behind me there was one person Juan de la Cruz.

Q. State who was in the car, what kind of people?

A. First class more ladies than gentlemen, American ladies.

Q. Was this the front or rear platform?

A. I said front platform.

Q. From where those ladies were sitting could they see the motion made by Mr. Gavieres?

A. I believe so.

Q. Was the door open or shut?

A. Open.

Q. At what distance from Mr. Gavieres were the ladies sitting when the accused said to you what you mentioned?

Mr. GAVIERES: Object to the question as immaterial.

The COURT: Sustained.

Q. Had you had any trouble with the defendant prior to this date, or why did he say these things to you if you know?

A. No, personally I have not had any trouble with him.

Q. Why did the accused say this to you, if you know?

A. I do not know, but I think he made two or three complaints against my policemen and to my own judgment, seeing

33 those complaints were unjust, I have defended my men before my chief and that is all.

Q. Did you have any conversation with this man after you arrested him?

A. No sir.

Q. Did you make any complaint of any kind?

A. I made a complaint for an infraction of an ordinance in the municipal court and he has been condemned to pay a fine of 25 pesos.

That's all.

Cross-examination by Mr. GAVIERES:

Q. Were you friends before?

A. Yes sir.

Q. How many years?

A. Many years.
Q. Before you belonged to the police force were you frie-ds?
A. Yes sir.
Q. Intimate friends?
A. Not very intimate.
Q. Was your intimacy such as you used the words thee and thou between yourselves?
A. Yes sir.
Q. When you arrested the accused did he refuse to admit your authority?
A. No sir.
Q. Did he then and there submit to your orders?
A. At the first he asked me for the warrant, but I said to
34 him again he was arrested and I took him by the arm and we got off of the car without any resistence on his part.
Q. What preceinct do you belong to?
A. No. 6.
Q. What are the limits of that precinct?
A. On the north to the cementery at Paco and South beyond Mandaloyan bridge.
Q. And it is only within the limits of your precinct that you exercise your functions?
A. Those limits are my precinct,—I am a Captain of the Police of the City of Manila.
Q. Your precinct is the City of Manila?
A. Yes sir.
Q. Your functions as Captain of the Police in Manila extend to those limits?
A. Whether north, south or east I exercise my functions as Captain of the Police within the limits of Manila and to a boundary line 2½ miles beyond those limits.
Q. Did you not say the limits of your precinct on the north was bound by Paco cementery?
A. Yes sir.
Q. This boundary line on the north of the Paco cementery, starts at the police station at Paco?
A. On the contrary, it starts with the cementery going south that is, just the same as you say, from the station to the cementery,—it is also the same thing.
Q. Where is the police station?
A. Calle Paz.
Q. And when the accused said these words do you know
35 what place it was?
A. In calle Concepcion.
Q. Is it further than the cementery or more this way?
A. More this way than the cementery.
Q. Then before you reached the northern boundary of your jurisdiction?
A. At the boundary of my precinct.
Q. You presented a complaint to the Municipal Court?
A. Yes sir.

Q. For the same words the accused addressed to you?
A. Yes sir.
Q. Do you care to repeat the very words the accused said to you?
A. I said them before to you,—he said "touch my balls".
Q. Then the accused did not say to you as set out in the complaint, "touch my balls"?
A. That is what he said "You are touching my balls" is what I remember.
Q. Is what you just said what the complaint states?
A. You know it means exactly the same thing,—it is a question of words, nothing more.
Q. What is the meaning of huevos in English?
A. Eggs.
Q. Is the words Eggs or Huevos an indecent word?
A. It is indecent according to the manner in which it is applied.
Q. Do you not eat eggs frieds, boiled and scrambled?
A. Yes, I eat hen's eggs,—but in English the word cojo-
36 nes means balls.
Q. But did you not say this word translated into English means eggs and do you not eat eggs scrambled or fried?
A. Yes sir.
Q. And how does the word become indecent?

Mr. BOUVE: Object to the question as frivolous.
The COURT: Sustained.

Q. Did he say this to you in Spanish?
A. Yes sir.
Q. Was the defendant penalized for the offense he was charged — in the Municipal Court?
A. Yes sir.
Q. What penalty?
A. 25 pesos.
Q. Did he appeal?

Mr. BOUVE: Object to the question as the record is the best evidence.

A. I do not know.
Q. Have you not had trouble before that time?
A. No sir.
Q. Did you not have an altercation before the chief of police on that same afternoon?
A. No sir.
Q. Did you not make use of the form liar towards the accused before the chief of police?
A. I do not remember.
Q. Do you not remember that the chief of police himself had to call you to order for that expression?
A. No sir.
37 —. Is it not true that both of you left the office of the Chief of Police that afternoon after having gone there for an investigation by the order of the Municipal Board?
A. Yes sir.

Q. Were you not accused by the accused in this case, in the presence of the Municipal Board for having held a son of his incommunicado?

A. He made no complaint against me.

Q. Did you not illegally detain incommunicado the son of the accused?

Mr. BOUVE: Object to the question.

The COURT: Sustained.

Q. Were you not accused in the presence of the Municipal Board for having held this man incommunicado?

A. No sir.

Q. Did not the accused accuse you?

A. No sir, the policeman who arrested him and the sergeant of the guard were the ones against whom accusations were made.

That's all.

ANGEL KOECOORIA, witness for the government, after being duly sworn, testified as follows:

Newspaper man,—live in Manila.

Direct examination by Mr. BOUVE:

Q. Do you know the accused, Mr. Gavieres, in this case?

A. Yes sir.

Q. Were you present at any conversation Mr. Gavieres
38 had with Captain Crame in the street car on June 20th?

A. No sir.

Q. Did you ever have any conversation with Mr. Gavieres in regard to this conversation?

Mr. GAVIERES: Object to the question, as it is an indirect method of getting the conversation on the part of the accused.

The COURT: I think it is competent.

Mr. GAVIERES: Exception.

A. Yes sir.

Q. When did you have this conversation with the accused?

A. The same day that Mr. Gavieres was sentenced in the Municipal Court.

Q. What was this conversation, state it in detail, all of it that refers to the conversation between Mr. Gavieres and Capt. Crame?

A. Mr. Gavieres on that day got on the same car with me and told me that he had been sentenced in the Municipal Court for insults made against Capt. Crame and he gave me that news in case I wanted to put it in my paper.

Q. What did he say?

A. The insults made against Capt. Crame was being on the car and holding his private parts, he said to him "touch them".

Q. Did Mr. Gavieres state to you that he met Capt. Crame on the car, took hold of his private parts and told Capt. Crame he might touch them or seize them?

Mr. GAVIERES: Object to the question, leading.
The COURT: Sustained.

Q. Prefix to that question: State whether or not.

The COURT: Now I overrule the objection.
Question changed by Mr. Bouve to read as follows: Please tell us what the accused said to you, giving the same words?

A. That he Mr. Gavieres, said to Capt. Crame touch my balls.
Q. Did Mr. Gavieres state to you anything that he did at that time?
A. No sir.
Q. Action or motion?
A. The holding his private parts, he told me.
Q. What newspaper are you with?
A. Libertas.
Q. Did the accused make any statements as to why he wanted that published in the newspaper?
A. No sir.
Q. Did he ask you to publish it in the paper?
A. He said to me in case I might want to publish it in the paper.

That's all.

Cross-examination by Mr. GAVIERES:

Q. Was this conversation to which you refer the one in which the accused said to you 25 pesos fine had been imposed upon him in the Municipal Court?
A. Yes sir.
Q. When the accused stated to you that 25 pesos had been imposed upon him in the Municipal Court did you not ask him why?
A. Yes sir.

That's all.

JUAN DE LA CRUZ, witness for the government, after being duly sworn, testified as follows:

I am a motorman for the street railway.

Direct examination by Mr. BOUVE:

Q. Where were you on the 20th of June, 1907?
Mr. GAVIERES: I would like to ask the witness if he has a cedula.
Answer. No.

Mr. GAVIERES: I object to this witness testifying as he has no cedula.
The COURT: Overruled.
Mr. GAVIERES: Exception.

Q. Where were you on June 20th, this year?
A. On duty.
Q. Where?

A. On a car.
Q. Do you know the accused?
A. No sir.
Q. Did you see him before to-day?
A. No.
Q. Do you remember coming to the office of the prosecuting attorney and making a statement with Capt. Crame here?
A. Yes sir.
Q. Do you remember what that statement was about?
41 A. Yes sir.
Q. Did you see anybody insult Capt. Crame on June 20th, 1907, in a car?
A. Yes sir.
Q. Who was the man?
A. (Indicating the accused.)
Q. Who is the man?
A. The accused.
Q. What did you say this man did?
A. I heard when they went on the steps saying this words: "touch my balls". I heard no more.
Q. Who said that?
A. The accused.
Q. Whereabouts were you in the car when this happened?
A. On the right hand side.
Q. Were you inside the car or outside?
A. Outside the car.
Q. In what place?
A. On the platform.
Q. Platform in front or behind?
A. In front.

That's all.

Cross-examination by Mr. GAVIERES:

Q. What were you doing on the car that day?
A. Standing on the platform.
Q. Why were you standing on the platform?
A. Because I was looking after the motion of the car.
Q. Are you a motorman?
42 A. No sir.
Q. And having your attention fixed on the operation of the motorman could you have heard words of the passengers spoken clearly?
A. What passengers?
Q. Inside or outside?
A. Yes, always on the steps I can hear clearly.
Q. Where were you, in front?
A. I was toward them, facing them.
Q. Where was Capt. Crame in front or behind?
A. On my left side.
Q. How could you see those getting on the platform if you were on the right side of Capt. Crame?

A. Because I could turn my head and see them.
Q. Did you turn your head when the accused was mounting the steps?
A. Yes sir.
Q. Where was the accused standing when he pronounced these words, on the steps, platform or inside the car?
A. On the steps.
Q. What day did that happen?
A. I do not remember.
Q. What month.
A. I do not remember.
Q. What hour?
A. I do not know.
Q. Were you in the car?
43 A. Yes sir.
Q. And you do not know what time you were in the car?
A. No sir.
Q. Were you sent for at any time to go to the Paco police station by any policemen?
A. No sir.
Q. Did you go to the Paco police station?
A. No sir.
Q. Then you do not remember the day, month or year when this occurred, was it last year?
A. This year, 1907.
Q. How many months ago?
A. About a month ago, as I remember it.
Q. Was it in the evening or afternoon?
A. Afternoon.

That's all.

ROQUE SANCHEZ, witness for the government, after being duly sworn, testified as follows:

Policeman, live Cajiling No. 3.

Direct examination by Mr. BOUVE:

Q. Do you know Mr. Gavieres, the accused?
A. Yes sir.
Q. Were you present on the 20th of June on the occasion when Capt. Crame had a conversation with some one in the street car?
A. No sir, I was not there?
Q. Did you ever hear anybody talking about a conversa-
44 tion between Mr. Gavieres and Capt. Crame?
A. No.
Q. Did you ever hear Mr. Gavieres say anything as to a conversation between he and Capt. Crame in a street car?
A. On the 20th of June I was on duty on Calle Laban from 3 to 7 in the evening—about 4:15 Mr. Gavieres got there and went to the office of the Electorial college and afterwards he wrote down his name. After writing his name he went to the crowd. I was at

a certain distance, but not far from them and then he got a paper from his pocket and was showing it to some people. (with a motion of masturbating himself) and after that he said 25 pesos is no matter to me, because I have insulted Capt. Crame. That is all I know—after that I reported what Mr. Gavieres said to Capt. Crame.

That's all.

Cross-examination by Mr. GAVIERES:

Q. When did this happen?
A. 28th of June, in the afternoon.
Q. Was Capt. Crame there?
A. No sir.
Q. What persons were there?
A. I do not know—there were many.
Q. To whom did Mr. Gavieres say these words?
A. To the people who wanted to register.
Q. What were you doing there in the college electoral?
45 A. On guard.
Q. And why did you not arrest Mr. Gavieres when he started this scandalous proceeding?
A. Because I was not certain—that was why I reported it to Capt. Crame.
Q. Was not the defendant, Gavieres, raising a scandal there?
A. He pulled a paper out of his pocket and showed it to the crowd—the people were laughing.
Q. Who were those people, do you not know any of them?
A. No sir.
Q. Not even one?
A. No sir.
Q. Are you from the precinct of Paco?
A. Yes sir.
Q. Do you know any of the inhabitants of Paco who were there?
A. No.
Q. Do you know Ariston Estrada?
A. No.
Q. Do you not know a single person that was there?
A. No sir.
Q. Were you the only policeman on guard there?
A. Yes sir.

That's all.

The Government rests.

VICENTE GAVIERES, defendant, after being duly sworn, testified as follows:

Chemist, live in Paco No. 370.

46 Direct examination by Mr. GAVIERES:

Q. Have you been accused in the Municipal Court?
A. Yes sir.
Q. By whom?

A. Capt. Crame and prosecuted by the municipal fiscal.
Q. What were you accused of in this complaint?
A. I was accused of touching my private parts and of having told Capt. Crame to touch my balls in a street car on the way to Paco in Concepcion.
Q. You were sentenced?
A. Yes sir.
Q. What punishment.
A. 25 pesos.
Q. Did you pay the fine?
A. Yes I did.
Q. Were you a frien- of Capt. Crame's?
A. Up to about a year ago I was a friend of Capt. Crame's. On account of a complaint by me to him to the effect that one of his men had insulted my wife some 8 or 9 months ago, it may be a year, I became an enemy of him.
Q. How long have you been a friend of Capt. Crame's?
A. From the time we were students—if I am not mistaken. I used to be his classmate.
Q. When you addressed those words to him did you do it with an idea of insulting an authority?
A. No sir, I did not—I directed those words to Sr. Crame and not Capt. of the police, and from the use of these words it is a
47 private quarrel between us. Before one hour he called me a liar in the office of the police, Chief of Police.
Q. From the confidence you had which is the result of your friendship with Capt. Crame had not existed in spite of the troubles you had with him, which of you used these words?
(Question unintelligible to reporter.)
A. I object to my lawyer's question I do not want to answer.

The COURT: I will not compel him—the court sustains the witness's objection.
Question withdrawn.

Q. When Capt. Crame arrested you was it only at that moment that you submitted to the authorities?
A. Yes, because he seized me with violence and pulled me from the car.
Q. Did you make any resistence?
A. Not a word.
Q. Did you object to the arrest?
A. Yes sir.
Q. In what way?
A. I asked him if he had a warrant, because he was out of his jurisdiction, nor was he on the car in the capacity of a guard.
Q. In spite of the fact that no warrant was presented for your arrest did you give yourself up?
A. I did—immediately when he arrested me I simply made use of my right to protest.
48 Q. In what form did you make this protest?

Mr. BOUVE: Object to the question as immaterial.

That's all.

Defense rests.
Case closed.

I certify *that* the foregoing to be a true transcript of the notes taken by me in the above case.

(Sgd.) C. G. MURRAY,
Official Reporter.

Manila October 7, 1907.

49 On the same day, towit, the 2nd of September, 1907, the following decision was rendered by the said Hon. Newton W. Gilbert:

(Title and Court.)

This cause having been submitted and evidence heard, the court finds it proven, beyond a reasonable doubt, that the defendant did outrage and insult, both by deed and word, Capt. Jose Crame, captain of the police of the City of Manila, a public official and agent of the authorities, while in the exercise of his functions, in his presence and in the presence of numerous other persons.

The court, therefore, finds the defendant Guilty and sentences said defendant, Vicente Garcia Gavieres, to four (4) months of arresto mayor, and to pay the costs of the prosecution.

(Signed) NEWTON W. GILBERT, *Judge.*

Manila, September 2nd, 1907.

Afterwards, towit, on the 4th day of September, 1907, came counsel for defendant and appealed from the judgment in said cause, finding the defendant guilty, which said appeal is in the words and figures following, towit:

(Court and Title.)

Now comes the defendant through his attorney and states:

That having excepted to the decision heretofore rendered in the above entitled cause, he hereby appeals from the said judgment to the Supreme Court of these Islands.

Manila, September 4th, 1907.

50 (Signed) DR. M. G. GAVIERES.

Received a copy,
JESSE GEORGE,
Pros. Att'y.

Thereafter, towit, on the first day of November, 1907, the said cause was forwarded to the Clerk of the Supreme Court by the Clerk of the Court of First Instance of the City of Manila, which cause was received in said Supreme Court on the same day.

Afterwards, towit, on the 15th day of November, 1907, counsel for defendant, filed in the Supreme Court the following motion:

(Court and Title.)

Now comes the defendant, through his attorney, and respectfully submits to the consideration of this high tribunal, the following

Motion.

1. That this is a prosecution for the crime of *insults* and *grave contumely*.

2. That this offense falls under the provisions of Sec. 457 et seq. of the Penal Code.

3. That Sec. 467 of the Penal Code requires that the complaint for this offense be made exclusively and solely by the aggrieved party himself.

4. That Sec. 753 of the Criminal Compilation, as amended by the Royal Decree of May 6, 1880, in force in these Islands, as suppletory law, forbids the courts of justice to allow any complaint for contumely or calumny unless there is attached thereto a certificate as to the act of conciliation.

51 5. That Sec. 804 of the Act of September 14th, 1882, in force in the Philippines as doctrine, contains similar prohibition.

6. That Sec. 1 of General Order No. 58 continued in force such existing laws as were not modified or repealed by the same, either expressly or by necessary implication.

7. That neither the aforesaid section of the criminal compilation in question, as amended by the Royal Order of May 6, 1880, nor the section of the Act of Sept. 14, 1882, above referred to, have been modified or repealed either expressly or by necessary implication by said General Order No. 58 or any subsequent law, but on the contrary some of the Courts of First Instance and this Supreme Court itself have heretofore sustained the aforesaid laws:

8. That the last paragraph but one of Sec. 467 of the Penal Code provides who should be considered as authorities.

9. That the alleged aggrieved party in this case is not included in the said paragraph of Section 467 of the Penal Code.

10. That there is nothing in the record to show that this prosecution was *actually* and *exclusively* instituted by the aggrieved party himself.

11. That there is no evidence in this case of the required certificate to the effect that the act of conciliation was had before the commencement of this action, having been filed together with the complaint as required by law.

52 12. That it does not appear that the substantive provisions of the said laws have been complied with.

13. That for the reasons above set forth this prosecution can not legally be maintained either by the United States or by the Prosecuting Attorney in its behalf.

Wherefore the undersigned attorney respectively asks this Court to enter an order dismissing this action without costs.

Manila, November 15, 1907.

(Signed) DR. M. G. GAVIERES.
Attorney for Defendant.

On the 25th of November, 1907, the Supreme Court denied defendant's motion to dismiss without prejudice to his raising the same question in his brief on the merits.

Afterwards, towit, on the 16th day of December, 1907, counsel submitted a motion to the Supreme Court asking that the case be dismissed on the ground that defendant, having been formerly convicted and sentenced by the Municipal Court of the City of Manila for the same offense, had been placed twice in jeopardy, which said motion was overruled by the Court on the following day, without prejudice to the same question being again raised by counsel in his brief upon the merits of the case.

On December 31, 1907, counsel for defendant filed his brief in the Supreme Court, accompanied by the following assignments of error, to-wit:

1.

The court erred in allowing the prosecuting attorney and
53 not the alleged aggrieved party to intervene in this case, in violation of chapter 3, title 10, book 2, of the Penal Code.

2.

The Court erred in holding that the alleged aggrieved party was a public authority, in violation of the last paragraph but one of the same section, 467, chapter 3, title 10, book 2 of the Penal Code.

3.

The Court erred in allowing the complaint, without the same having attached thereto the certificate to the effect that the act of conciliation had been first had, in violation of section 753 of the Criminal Compilation, as amended by the Royal Decree of May 6, 1880, considered as suppletory law in these Islands.

4.

The Court also erred in allowing the complaint in this case without the same being accompanied by a certificate showing that the act of conciliation had been first had, in violation of section 804 of the Code of Criminal Procedure of September 14th, 1882.

5.

The Court also erred in overruling the plea of jeopardy made by the accused in violation of the constitutional act of the Philippines, that is to say, the Act of Congress of July 1st, 1902,
54 Sec. 5, par. 3 which reads in part as follows: "and no person for the same offense shall be twice put in jeopardy of punishment".

6.

The Court also erred in disallowing defendant's claim that he had been placed twice in jeopardy, in violation of sections 26 and 28 of General Order No. 58.

7.

The Court erred in not taking into consideration the provisions of paragraph 3, section 21, General Order No. 58.

8.

The Court erred, finally, in not taking into consideration the jurisprudence of the Supreme Court of the United States, in a similar case to wit, Homer E. Grafton, decided May 27th, 1907, and reported in volume 5, page 437 of the Official Gazette.

On the 13th day of February, 1908, the Attorney-General filed his brief and on the third of May, 1908, the case was duly submitted to the Court for decision on the merits, without oral argument.

Thereafter, towit, on the 30th day of March, 1908, the Supreme Court of the Philippine Islands rendered the following decision:

55 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

March 30, 1908. General Register No. 4377. Book of Decisions 15, F—Heard: March 3, 1908.

THE UNITED STATES, Plaintiff and Appellee,

vs.

VICENTE GARCIA GAVIERES, Defendant and Appellant.

JOHNSON, J.:

On the 25th day of June, 1907, the Prosecuting Attorney of the City of Manila presented a complaint against the defendant accusing him of the crime of "calumniating, outraging, and insulting by word of mouth, and in his presence, a public official, an agent of the authorities, in the exercise of his office."

On the 29th day of June, the defendant presented a demurrer to said complaint upon the ground that it did not conform substantially to the form prescribed by law.

On the 6th day of July, the defendant presented a further objection to the complaint alleging that it contained a description of more than one crime.

On the 25th day of July, the judge of the Court of First Instance overruled said demurrer, to which ruling of the court the defendant duly accepted.

56 On the 29th day of July, the defendant was again brought before the court, and the complaint was duly read to him, and

he was asked to plead whether he was guilty or not guilty of the crime charged in said complaint, to which question he replied: "Not guilty" and pleaded "jeopardy". On the 31st day of July, the defendant presented a motion to the lower court in which he asked the dismissal of the complaint in the following form:

"That having been already convicted of the crimes with which he is now charged, he is not guilty, he having been placed twice in jeopardy. Wherefore, he prays the court to dismiss the complaint and acquit the defendant, without costs." This motion to dismiss the cause for the reasons stated that the defendant had been in jeopardy was heard by Judge Sumulong on the 23rd day of August, 1907, and denied upon the ground that if the defendant had been once in jeopardy the same was matter of proof to be pre- S. F. sented during the trial.

On the 2nd day of December, the cause was duly brought to trial. During the trial, the Prosecuting Attorney, by means of witnesses, proved all the facts set out in the complaint in said cause. The defendant became a witness in his own behalf, and admitted in the presence of the court the facts charged in the said complaint, but claiming that the insulting words used were directed to Mr. Cramie as Mr. Cramie and not as Captain Cramie. The defendant also stated that he had been arrested, tried, and fined in the sum of P25.00, but presented no further proof than his own statements of this fact. He did not even state for what offense he had been accused and tried in said municipal court.

57 After hearing the evidence adduced during the trial the lower court found that it had been proven beyond a reasonable doubt that the defendant did outrage and insult, both by deed and word, Captain José Cramie, Captain of the Police of the city of Manila, a public official, and an agent of the authorities, while in the exercise of his functions, in his presence, and in the presence of numerous other persons, and sentenced the defendant to be imprisoned for the period of four months of arresto mayor, and to pay the costs of the prosecution. Against this sentence the defendant appealed and made several assignments of error, the principal one of which is that he had been placed twice in jeopardy.

During the trial in the lower court the defendant did not present any proof to sustain his allegation that he had been once in jeopardy for this same offense. The record contains, however, the complaint which had been presented in said municipal court, but there is nothing to show how it became a part of the record. The alleged complaint presented against the defendant in the municipal court charged the said defendant with a violation of paragraph 2 of Article 28 of the Ordinances of the City of Manila. Said paragraph 2 provides as follows:

"SEC. 2. No person shall be drunk or intoxicated or behave in a drunken, boisterous, rude, or *indecent manner in any public place open to public view;* or be drunk or intoxicated or behave in a drunken, boisterous, rude, or indecent manner in any place or premises to the annoyance of another person."

58 The crime with which the defendant was charged in the Court of First Instance was that of "calumniating, outrag-

ing, and insulting by word of mouth, and in his presence, a public official, an agent of the authorities, in the exercise of his office," and was punishable under Article 257 of the Penal Code, which provides:

"The penalty of arresto mayor shall also be imposed on those who outrage, insult, or threaten, by deed or word, public officials or agents of the authorities, in their presence, or in a writing addressed to them."

By comparing the alleged offense with which the defendant was punished in the municipal court with the offense charged in the complaint in the present cause, it will be seen that they were separate and entirely distinct offenses. It is possibly true that the offense for which the defendant was convicted in the municipal court resulted from the same acts which constituted the offense for which he was prosecuted in the Court of First Instance, but this court has held that the mere fact that a person is prosecuted twice by different governmental entities for different offenses resulting from the same acts does not justify the plea of former jeopardy. (U. S. vs. Chan Cun Chay, 5 Phil. Reps. 385; U. S. vs. Flemister, 5 Phil. Reps. 650.)

An act may be a penal offense under the laws of the state and other penalties under proper authority may be imposed for its commission by a municipal ordinance, and the enforcement of one penalty by the state would not preclude the enforcement of the other by the municipality. (Rogers vs. Jones, 1 Wendell (N. Y.)
59 261; Cooley's Constitutional Limitations 239; Ex-parte Hong Shen, 98 California 681; People vs. Hanrahan, 75 Michigan 611.)

Where the same act constitutes an offense against each of two governmental entities exercising jurisdiction over the same territory, a prosecution brought by one does not necessarily bar a prosecution by the other. (U. S. vs. Barnhart, 10 Sawyer 491; Abbott vs. Slate, 75 N. Y. 602; U. S. vs. Marigold, 9 Howard (U. S.) 560.

It might be argued because of the doctrine established in the decision of the United States vs. Grafton (206 U. S. 303) that the doctrine established by this court in the cause of the U. S. vs. Chan Cun Chay had been reversed, upon the theory that there existed in the Philippine Islands but one sovereignty. We do not believe that the Supreme Court of the United States intended that its decision in that case should be extended to cases like the present. The civil and military authorities which attempted to punish Grafton each received its authority from the same source, and, therefore, they were coordinate in their respective spheres of government. It is not believed that the doctrine established in that case should be extended to a state and its municipalities.

In pleading former jeopardy, it is not sufficient simply to say that the party alleging it had been in jeopardy once, but he must allege and prove in the most specific way that the offense, for which he was formerly convicted or acquitted, was identically the same offense for which the courts were attempting to try him again.
60 The evidence adduced during the trial of said cause justified the following conclusions:

First. That the defendant did in the manner and form alleged

in said complaint outrage and insult by word of mouth and in his presence one Jose Cramie;

Second. That José Cramie was an agent of the authorities at the time of said insult, and in the exercise of his office;

Third. That the complaint presented in the lower court was sufficient in form and substance.

Therefore, the judgment of the lower court is hereby affirmed, with costs. It is so ordered.

(Signed) E. FINLEY JOHNSON.

We concur:

(Sgd.) C. S. ARELLANO.
" VICTORINO MAPA.
" A. C. CARSON.

TRACY, *J.*, dissenting:

In affirming the decision of this court in the Flemister case, the Supreme Court of the United States relied upon the findings of the courts below, to the effect that the acts complained of in the two prosecutions being assaults upon two separate individuals constituted two distinct offenses, and held consequently that it was unnecessary to consider the effect of the conviction under the municipal ordinance upon the subsequent prosecution of the accused under the Penal Code. Mr. Justice Holmes, however, in rendering the decision, adverted to the fact that the assault set up in the second charge was not relied upon or proved as a part of the first offense, saying:

61 "It is unnecessary to consider whether the same conduct could be punished at the same time on the same grounds by both a superior and subordinate authority in the same jurisdiction."

In two cases Chan Cun Chay (5 Phil. Rep. 385) and Flemister (5 Phil. Rep. 650) this court held that it could be so punished, although the references therein to authorities on the subject of two distinct sovereignties can not be considered as having direct application to the undivided sovereignty of the United States in the Philippine Islands, nor can the operation of the double jeopardy clause of the Philippine Bill be limited by the terms of General Order No. 58 quoted in those decisions. Numerous decisions of American state courts can be cited in harmony with those cases, although authority to the contrary is not wanting. (State vs. Thornton, 37 Mo. 360.)

In the Grafton case (6 Phil. Rep. 55) this court applied the same doctrine to a prior conviction under general military order No. 62, on the ground that under the authorities and precedents up to that time such orders must be considered as designed for the preservation of military discipline only, just as in the present case it is contended that the municipal ordinances must be considered as a rule for the preservation of municipal order only, as distinct from the broad effect of the general penal law. It may be observed that of the two classes of cases the difference from the general penal law appears to be stronger in that of the military order than in that of the municipal ordinances.

62 Upon this point this court was reversed by the Supreme Court of the United States. That Court, speaking through Mr. Justice Harlan, said:

"If, therefore, a person be tried for an offense in a tribunal deriving its jurisdiction and authority from the United States and is acquitted or convicted, he cannot again be tried for the same offense in another tribunal deriving its jurisdiction and authority from the United States."

And again:—"But we rest our decision of this question upon the broad ground that the same acts constituting a crime against the United States cannot, after the acquittal or conviction of the accused in a court of competent jurisdiction, be made the basis of a second trial of the accused for that crime in the same or in another court, civil or military, of the same government."

And again:—"The government of a state does not derive its powers from the United States, while the government of the Philippine Islands owes its existence wholly to the United States, and its judicial tribunals exert all their powers by authority of the United States. * * * So that the cases holding that the same acts committed in a state of the Union may constitute an offense against the United States and also a distinct offense against the state do not apply here, where the two tribunals that tried the accused exert all their powers under and by authority of the same government,—that of the United States."

Under these decisions of the Supreme Court of the United States the defense of double jeopardy applied to a single act constituting an infraction both of a general penal law and of particular
63 regulations, such as a military order or a municipal ordinance of the same general character.

There are not here two distinct offenses essentially different in their nature. After quoting with approval the language of this court on the subject of the identity of offences, Mr. Justice Harlan, in the Grafton case, cites this passage from Bishop's Criminal Law:

"It is not necessary, to establish the defence of 'autrefois acquit' or 'convict,' that the offense in each indictment should be the same. If the transaction is the same, or if each rests upon the same facts between the same parties, it is sufficient to make good the defense."

In the case at bar the act was single and identical and necessarily entered into the establishment of both offences. Without proof of it conviction upon neither of them could have been sustained and in the opinion of the minority of this court the circumstances that the person against whom the insulting language and action were directed was a public official, does not suffice to endow it with the character of a separate offence against two different laws.

In the United States vs. Parcon (6 Phil. Rep. 632) it was pointed out that the doctrine of double jeopardy was not a new creation of American law, but was rather the application of a principle recognized in all legislation, ancient as well as modern. It was well established in the Spanish system.

64 It may be worth while to note that the municipal court of the City of Manila in which the first conviction was had, had jurisdiction to punish not only for violations of municipal or-

dinances but for crimes and misdemeanors, up to a certain limit. (Act. 183, section 40.)

The judgment should be reversed and the defendant acquitted.

(Signed) JAMES F. TRACEY.
" FLORENTINO TORRES.
" CHARLES A. WILLARD.

65 Thereafter, towit, on the 8th day of April, 1908, counsel for defendant having been notified of the decision of the Supreme Court in the above entitled cause, excepted in writing thereto.

On the same day, counsel for defendant filed the following motion:

(Court and Title.)

Now comes the defendant and appellant in the above entitled cause and asks this Honorable Court to set aside its decision therein rendered and requests that a new trial be had, upon the following grounds:

1. That the said decision is contrary to the common law.
2. That the said decision is contrary to the Act of Congress of July 1st, 1902.
3. That the said decision is contrary to the constitutional law of the United States of America.
4. That the conclusions of fact contained in the said decision are openly and manifestly contrary to the weight of the evidence.

Manila, April 7, 1908.

(Signed) VICENTE FOZ,
Counsel for Defendant.

Endorsed.

Received copy this 8th day of April, 1908.

(Sgd.) JOVITO YUSAY,
Ass't Att'y Bu. of Justice.

66 Thereafter, towit, on the 18th day of April, 1908, counsel for defendant notified the Supreme Court in writing of his intention to sue out a writ of error or take an appeal in the event of his motion for a new trial being denied, and asked that the amount of the bond to be required for his liberty during the pendency of either recourse be fixed.

On July 14th, 1908, the Supreme Court denied defendant's petition for a new trial and directed that final judgment be entered forthwith, and the case remanded within ten days thereafter, to the Court of First Instance for proper action in accordance with the law.

Thereafter, towit, on the 16th day of July, 1908, final judgment was entered as follows:

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

Judgment. July 16, 1908. Judgment Book 5, F. R. G. No. 4377.

THE UNITED STATES, Plaintiff and Appellee,
vs.
VICENTE GARCIA GAVIERES, Defendant and Appellant.

The Court having regularly acquired jurisdiction for the trial of the above entitled cause, submitted by both parties for decision, after consideration thereof by the Court, upon the record, its decision and order for judgment having been filed on the thirtieth of March, A. D. 1908.

67 By virtue thereof, it is hereby adjudged and decreed that the judgment of the Court of First Instance of the City of Manila, dated September 2nd, 1907, be, and the same is hereby affirmed, together with the costs, which amount to P24.00, for which the Court of First Instance will issue the necessary execution.

It is further ordered that the said cause be remanded to the Court of First Instance for the corresponding effects.

(Signed) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

On July 20, 1908, counsel for defendant excepted in writing to the final judgment entered in said Court in the above entitled cause.

And afterwards, towit, on the said 20th day of July, 1908, there was filed in the Clerk's Office of said Court in said cause a petition for a writ of error, said petition being in the words and figures following, towit:

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 4377.

VICENTE G. GAVIERES, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

Insults and Grave Contumely.

Petition for Writ of Error.

Now comes Vicente G. Gavieres, the plaintiff in error in the above entitled cause and states:

68 That on the 2nd day of September, 1907, the Court of First Instance of Manila decided this case and rendered a judgment, the concluding paragraph of which is as follows:

"The court, therefore, finds the defendant *guilty* and sentences said defendant, Vicente Garcia Gavieres, to four (4) months of *arresto mayor*, and to pay the costs of the prosecution."

That the plaintiff in error duly excepted in writing to the said judgment and feels himself aggrieved by the decision of this Court affirming the judgment of the Court of First Instance of the City of Manila, for the reasons set out in the follows:

Assignment of Errors.

I. This Court erred in affirming the judgment of the Court of First Instance of the City of Manila in this, that it thereby violated the provisions of section 5 of the Act of Congress of July 1, 1902, which reads as follows: "No person shall be put twice in jeopardy for the same offense."

II. This Court also erred in holding that the accused had not been put twice in jeopardy for the same acts; for it is not the statutory identity of the offense but that of the acts committed by the defendant though such acts may be differently defined in distinct sections of the statute, which must be shown in pleading jeopardy.

III. That the Court erred in holding that when an act constitutes an offense punishable by the laws of the State which is equally penalized by a municipal ordinance, the imposition of a penalty by the State is not a bar to the imposition of another penalty by the municipality, for if we apply such doctrine to the Philippines, it would be as much as to say that where an offense penalized by the Penal Code here in force, which is also punishable under
69 the ordinances of the City of Manila, the two penalties may be imposed.

(4) This Court also erred in holding that the doctrine announced by the Supreme Court of the United States in the case of Grafton vs. The United States (206 U. S., 333) is not applicable to a State with reference to its municipalities, for the political organization of the Philippines, the organization of its tribunals, their jurisdiction, from the Supreme Court down to the justice courts and the municipal court of the City of Manila is derived exclusively from the United States of America, and all and each of them have jurisdiction to try not only violations of municipal ordinances but any other offense against the general laws in force in the Philippines, particularly the Penal Code.

(5) This Court also erred in holding that the defendant adduced no evidence in support of his allegation that he had been put twice in jeopardy for the same offense, for at pages 39 and 40 of the record of the proceedings in this case in the Court of First Instance, there is a stipulation signed by counsel for the Government and the defense, respectively to the effect that the acts committed and the words spoken by the accused as alleged in the complaint in this case, were the same acts and the same words which were the subject of the former complaint under which the defendant had already been convicted.

Wherefore, the plaintiff in error prays the Supreme Court of the

Philippines to allow him to prepare and sue out a writ of error to the Supreme Court of the United States of America, in accordance with the rules and procedure of said Court; he also prays
70 that during the preparation and prosecution of the said writ of error and until the final determination of the same he be allowed his liberty upon the filing of a penal bond in such sum as this Honorable Court may fix.

Manila, July 20, 1908.

(Signed) VICENTE FOZ.
Counsel for Plaintiff in Error.

UNITED STATES OF AMERICA.
Philippine Islands, City of Manila, ss:

Vicente G. Gavieres, a resident of the City of Manila, states under oath:

That he is the plaintiff in error in the above entitled cause; that he has read the foregoing petition, and that all of the allegations contained therein are true to the best of his knowledge and belief.

(Signed) V. G. GAVIERES.

Subscribed and sworn to before me, this 20th day of July, 1908, deponent having exhibited to me his personal cedu*l* No. 1333782, issued in Manila April 4, 1908.

[SEAL OF COURT.] (Signed) R. HERAS,
Deputy Clerk Supreme Court, Ex-Officio Notary Public.

71 Supreme Court of the Philippines. Clerk's Office. Filed Sept. 1, 1908.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the Philippine Islands, before you, or some of you, between the United States, plaintiff and appellee, and Vicente Garcia Gavieres, defendant and appellant, a manifest error hath happened to the great damage of the said Vicente Garcia Gavieres, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, we command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the 31st day of December, 1908, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that

error, what of right, and according to the law and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States the first day of September, in the year of Our Lord, 1908.

J. E. BLANCO,
Clerk of the Supreme Court
of the Philippine Islands.

72 The foregoing writ of error is allowed and it shall operate as a supersedeas of the judgment complained of, and upon the execution of a bond by Vicente Garcia Gavieres in the sum of one thousand pesos payable to the defendant in error, conditioned as required by law, to be approved by me, he shall be entitled to his liberty pending such writ of error. Dated this first day of September, 1908.

C. S. ARELLANO,
Chief Justice of the Supreme Court
of the Philippine Islands.

Supreme Court of the Philippines. Clerk's Office. Filed Sept. 1, 1908.

73 THE UNITED STATES OF AMERICA, *ss:*

To Attorney General for the Philippine Islands:

You are hereby cited and admonished to be in and appear at the Supreme Court of the United States to be holden at Washington, within one hundred and twenty days from the date of this citation, pursuant to a Writ of Error filed in the Clerk's Office of the Supreme Court of the Philippine Islands, wherein Vicente Garcia Gavieres is plaintiff in error, and the United States defendant in error, to show cause if any there be, why the judgment in said Writ of Error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this first day of September in the year of Our Lord, 1908.

C. S. ARELLANO,
Chief Justice of the Supreme Court
of the Philippine Islands.

I admit the receipt of a copy of the above citation and accept service thereof as though regularly had this first day of September, 1908.

GEORGE R. HARVEY,
Solicitor General for the Philippine Islands.

Supreme Court of the Philippines. Clerk's Office. Filed Sept. 1, 1908.

74 (Translation.)

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

No. 4377.

VICENTE G. GAVIERES, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in error.

Insults and Grave Contumely.

Bond in Favor of the United States of America.

Know all men by these presents, that we, Vicente G. Gavieres, as principal, and Juan Gimenes and Juan Reyes, as sureties, all of the City of Manila, are held and firmly bound unto the Government of the Philippine Islands, in the sum of One thousand dollars, Philippine currency, to be paid the said Government, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of August, in the year of our Lord, 1908.

The condition of this obligation is such that whereas the Supreme Court of the Philippine Islands has allowed the writ of error taken by the said Vicente G. Gavieres, to the Supreme Court of the United States upon the filing of a bond in the sum of One thousand dollars, Philippine currency.

Now, therefore, if the judgment of the Supreme Court of the Philippine Islands be reversed by the Supreme Court of the United States, this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

75 (Signed) V. GARCIA.
" JUAN REYES.
" JUAN GIMINES.

PHILIPPINE ISLANDS,
City of Manila, ss:

We, the undersigned sureties do hereby declare under oath, each for himself that we are solvent in the sum of One thousand dollars, Philippine currency, stated in the said penal bond, exclusive of all our property exempt from execution.

(Signed) JUAN REYES.
" JUAN GIMINES.

Subscribed and sworn to before me this 26th day of August, 1908. Affiants presented their respective cedulas Nos. 1313053 and 1337081, issued in Manila, in the months of February and April, 1908.

[SEAL.] (Signed) LEOCADIO JOAQUIN,
Notary Public.

My Commission expires December, 1908.

O. K.
(Sgd.) IGNACIO VILLAMOR,
Attorney-General.

Approved, this 1st day of September, 1908.
(Signed) C. S. ARELLANO,
Chief Justice of the Philippine Islands.

76 THE UNITED STATES OF AMERICA:

The Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the *United States*, do hereby certify that the foregoing 75 pages constitute a true and correct transcript of the record in the case of Vicente Garcia Gavieres, plaintiff in error, vs. The United States of America, defendant in error, including the original writ of error and citation, and copy of the writ of error bond.

In witness whereof, I hereunto set my hand and affix the seal of the Supreme Court of the Philippine Islands at Manila, P. I., this twenty-first day of September, A. D. 1908.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court
of the Philippine Islands.

Endorsed on cover: File No. 21,418. Philippine Islands Supreme Court. Term No. 296. Vicente Garcia Gavieres, plaintiff in error, vs. The United States. Filed November 17th, 1908. File No. 21,418.

Case No. 296.

OCTOBER TERM, 1909.

In the Supreme Court of the United States.

VICENTE G. GAVIERES,
Plaintiff in error.

versus.

THE UNITED STATES,
Defendant in error.

"Grave insults and outrages."

Now comes Vicente G. Gavieres, the plaintiff in error in the above entitled case, and makes the following:

STATEMENT OF FACTS.

(1) On June 21, 1907, an information was filed in the Municipal Court of the City of Manila charging the plaintiff in error with a violation of Municipal Ordinance No. 28, for having uttered the words "toqueme Vd. los huevos" (you catch my balls) addressed to one José Crame, Captain of Police.

(2) On the 25th of the same month the Municipal Court found plaintiff in error guilty of the offense charged and sentenced him to pay a fine of 25 pesos, which fine was paid at once without appeal. (Page 15 of the Case.)

(3) On the last mentioned day an information was presented to the Court of First Instance of the City of Manila charging the plaintiff in error with having violated Article 257 of the Penal Code of the Philippine Islands by having addressed the aforesaid words "toqueme Vd. los huevos" to a public official, that is, it was alleged that Captain Crame, the aforementioned Captain of the Police was a public official.

(4) It is admitted that the aforesaid words were uttered by the plaintiff only once and then were addressed to only one person, Captain Crame.

(5) Upon arraignment in the Court of First Instance the plaintiff in error interposed a plea of former jeorpardy which was overruled. (Page 14 of the Case.)

(6) The plea of former jeopardy having been overruled the plaintiff in error was tried by the Court of First Instance and was sentenced to imprisonment for a term of four months from which sentence the plaintiff in error appealed to the Supreme Court of the Philippine Islands.

(7) The Supreme Court confirmed the sentence of the lower Court which sentence confirming the sentence of the lower Court was confirmed by four of the judges of Supreme Court and from which three dissented. The plaintiff in error appeals to this Court from said sentence.

ARGUMENT.

FIRTS ERROR.

The Supreme Court erred in holding that the fact that the plaintiff in error was twice placed in jeopardy by the second indictment was not clearly proven.

Upon the trial of the case it was understood by all parties that this plaintiff in error had made the offensive

statement only once and then to but one person. Hence the stipulation of the attorneys and the tacit admission of such fact throughout all the arguments of the Prosecuting Attorney. He argued that notwithstanding this be true that still there might be a second conviction without placing the plaintiff in error in second jeopardy.

The complaint in the Municipal Court upon which this plaintiff in error was convicted and sentenced to pay a fine was before the trial Court and was considered by him in rendering his decision because we find that on July 6, 1907, before any evidence had been introduced the attorney for the plaintiff in error in a written argument referred to that complaint. (Page 10 of the Case) He said; "The defendant was convicted by the Municipal Court of the City on the 25th of June last of the same offense with which he is now charged before the Court of First Instance, the Municipal Court having sentenced him to pay a fine of 25 pesos, which he immediately paid" If this were not the fact and if all parties had not so understood the situation then the Prosecuting Attorney in his written answer to such statement would naturally have corrected the error but he instead (Page 12 and 13 of the Case) argued the case from the standpoint that the plaintiff in error could be retried for the identical same act regardless of a prior conviction.

It is clear from the evidence in the record that the defendant was tried in the Court of First Instance for having said the same words to the same person referred to in the Municipal Court and that it was on the same occasion. There was no confusion in the mind of the trial Court of the facts. The complaint from the Municipal Court together with a receipt showing payment of the fine was attached to the record with the stipulation of counsel that the act complained of was the same act. After the filing of the stipulation it was then unnecessary to prove the facts admitted thereby. The two complaints are for the use of the same words to the same person on the same day and

on the same occasion. The plaintiff in error testifying in his own behalf said: (Pages 26 and 27 of the Case).

Q. Have you been accused in the Municipal Court?
A. Yes sir.
Q. By whom?
A. Capt. Crame and prosecuted by the Municipal Fiscal.
Q. What were you accused of in this complaint?
A. I was accused of touching my private parts and of having told Capt. Crame to touch my balls in a street car on the way to Paco in Concepcion.
Q. Were you sentenced?
A. Yes sir.
Q. What punishment?
A. 25 pesos.
Q. Did you pay the fine?
A. Yes sir.

Some latitude must be allowed when a trial is conducted wholly through interpreters and especially in this case where there has been more than one translation. The first question "Have you been accused in the Municipal Court" would be entirely meaningless without that we assume that they were talking about some specific thing. "Have you been accused" is what we now have but the trial Court must have understood that the witness was referring to some specific thing and there was only one thing that they could have been talking about, and that is "Have you been accused of this offense" We cannot suppose that the Court, attorneys and witness were left entirely in the dark as to the meaning of the question and answer and this Court should put such reasonable construction upon what occured in the trial Court as to give some meaing. From the outset of the case there was no contention by the attorney for the Government that plaintiff in error was not being retried for the same act but in his written argument (Page 12 of the Case) he says in substance that conviction under a City ordinance creates no bar to a second trial for the same act which is in contravention of the Penal Code. He cites several cases

from the Supreme Court of these Islands. This leaves for the consideration of this court just one question and that is what is double jeopardy as applied to the Court of these Islands.

SECOND ERROR.

The Supreme Court of the Philippine Islands erred in holding that the plaintiff in error had committed an offense against two government entities and therefore the prosecution by one was not a bar to the prosecution by the other.

In order to sustain a conviction in both courts it was necessary for the prosecutión to prove the commission of the same act, the use of the aforesaid insulting language by the plaintiff in error to Captain Crame. There were not two offenses essentially different in their nature but under the Penal Code the plaintiff migh be charged with having committed the offense of using insulting language to a public official and be punished more severly than under the Municipal ordinance for using indecent language in a public place but the essential element for a conviction under either the Ordinance or Penal Code was the use of the same insulting or indecent language.

In the Grafton case, Mr. Justice Harlan cites this passage from Bishop's Criminal Law:

> "It is not necessary to establish the defense of 'autrefois' acquit or 'convict' that the offense in each indictment should be the same. If the transaction is the same, or if each rests upon the same facts between the same parties it is sufficient to make good the defense."

Such was evidently the intention in promulgating section 26 of General Order No. 58, wich reads as fallows:

> "When a defendant shall have been convicted or acquitted or once placed in jeopardy upon an informa-

tion or complaint, the conviction, acquittal or jeopardy shall be a bar to another information or indictment for the offense charged, or for an attempt to commit the same or for any offense necessaridy therein included of which he might have been convicted under such complaint or information."

Such being the case them it must follows that if the two alleged offenses are not essentially different in their nature or if both rest upon the same transaction between the same parties then in order to sustain the decision of the Supreme Court of these Islands we must assume that the Municipal Court and the Court of First Instance have derived their authority from different sources; that they owe their existence to different sources; that they owe their existence to different governmental entities. The present government of these Islands and all courts therein from Justice to Supreme owe their existence to the United States and each and all are limited in their powers by the Philippine Bill which cannot be limited by General Order N.o 58.

The Philippine Bill provides that no person, for the same offense, shall be twice put in jeopardy of punishment and it is very pertinent to observe that the crime of which the Supreme Court of the Philippine Island found the plaintiff in error guilty was within the jurisdiction of the Municipal Court. The Municipal Court has power to sentence for violations of the penal Code where the punishment to be inflicted does not exceed arresto mayor in its maximum degree. (Act N.o 183 Section 45 of Commission.)

THIRD ERROR.

The Supreme Court of the Philippine Islands erred in holding that the offenses charged in the two complaints were essentially different in their nature, that they were separate and entirely distinct offenses.

Section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill provides that "No person, for the same offense, shall be twice put in jeopardy of punishment". This general provision of our fundamental law of these Islands cannot be limited by General Order No. 58.

There were not two distinct offenses committed by the plaintiff in error because in order that the same identical act be considered as creating two offenses then we must inject into our Philippine Government the situation existing in the United States of having Courts deriving their authority from separate and distinct governmental entities. In the Grafton case it was said:

> "But we rest our decisión of this question upon the broad ground that the same acts constituting a crime against the United States cannot, after the acquittal or conviction of the accused in a court of competent jurisdiction be made the basis of a second trial of the accused for that crime in the same court or in another court, civil or military of the same government".

There is only one other theory upon which the same act might be held to constitute two separate offenses and that is that an ordinance is for the protection of the City while the Penal Code is of general application; but the same thing can be said more forcibly of a military regulation and the penal code of these Islands in which a criminal act may have been committed. It is undoubtedly essencial to the preservatión of military order that crime be punished just as it is necessary for a City to punish crime but the punishment of the same man for the same act cannot be had without placing him in double jeopardy unless the two courts which seek to try the case derive their authority from separate governmental entities. To say otherwise would be to reverse the decision of this Supreme Court in the Grafton case.

FOURTH ERROR.

The Supreme Court of the Philippine Islands erred in holding that the same act may constitute a crime against the State and also against the Municipality; that each may punish a person for an infraction of both laws by a single act and that punishment by either does not preclude punishment by the other.

This contention of the Supreme Court is based upon decisions rendered by that Court in the cases of Chan Cun Chay, 5 Phil. Rep., 385, and the Flemister case 5 Phil. Rep. 650 which follow a number of decisions in the United States but authority can also be found in the United States against such contention. If these Islands had ceeded to the United States certain rights then undoubtedly they might have retained the right to punish all crimes against law regardles of whether or not the Government of the United States did so or not but the situation is reversed. These Islands by an Act of Congress, The Philippine Bill, were given certain rights and certain restrictions were by the same act imposed upon the power of their courts. Among these restrictions we find the clause already quoted prohibiting that a man be twice placed in jeopardy for the same offense.

Under this provision there must be two offenses essentially different in their nature in order that two punishments may inflicted. The necessary elements which must be proved in order to sustain a conviction under the complaint in the Municipal Court are with one exception identically the same as those necessary to sustain a conviction in the Court of First Instance. The exception is that in Municipal Court the Goverment must prove that the words were uttered in a public place while in the Court of First Instance that they were uttered to a public official. This variation in detail does not change the essential elements of the crime, "The utterring of indecent and insulting lenguage".

As has been said before this exact point was discussed by

Mr. Justice Harlan in the Grafton case, he citing a paragraph from Bishop's Criminal Law which holds that if the transaction is the same, or if each rest upon the same facts between the same parties there is but one offense.

This case reached the Supreme Court before any person made any contention that the act was not a single act and that court was of the opinion that this had not been established but as will be observed this holding of the Court was of secondary importance because the majority of the Court held that even if such fact had been established beyond all reasonable doubt still the plaintiff in error had not been placed in double jeopardy basing such contention on the theory that the Grafton case did not apply to the Municipal Court.

This has been fully discussed in this brief and the plaintiff in error respectfully asks this Court to reverse the decisión of the Supreme Court of these Islands and acquit him from serving a sentence for a crime for which he has already been sentenced; that he be not punished twice for the same offense.

Respectfully submitted,

Vicente G. Gavieres
Plaintiff in Error.

SUMMARY OF ERRORS.

I.

The Supreme Court erred in holding that the fact that the plaintiff in error was twice placed in jeopardy by the second indictment was not clearly proven.

II.

The Supreme Court of the Philippine Islands erred in holding that the plaintiff in error had committed an offense against two government entities and therefore the prosecution by one was not a bar to the prosecution by the other.

III.

The Supreme Court of the Philippine Islands erred in holding that the offenses charged in the two complaints were essentially different in their nature; that they were separate and entirely distinct offenses.

IV.

The Supreme Court of the Philippine Islands erred in holding that the same act may constitute a crime against the state and also against the municipality; that each may punish a person for an infraction of both Laws by a single act and that punishment by either does not preclude punishment by the other.

Respectfully submitted,

Vicente G. Gavieres
Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

VICENTE GARCIA GAVIERES, PLAINTIFF in error,
v.
THE UNITED STATES.
} No. 102.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

Plaintiff in error was charged and convicted in the Court of First Instance for the city of Manila, under article 257 of the penal code of the Philippines, of the crime of "calumniating, outraging, and insulting, by word of mouth and in his presence, a public official and agent of the authorities in the exercise of his office," and sentenced to four months of arresto mayor and to pay the costs of prosecution. (Rec., 1, 28.) He appealed to the Supreme Court of the Philippine Islands, alleging a number of errors with respect to the form of complaint, the procedure pursued, and the failure of the trial court to give effect to his claim of prior jeopardy. (Rec., 4, 29, 30.)

That court affirmed the judgment of the lower court in an opinion which treated the claim that he had been twice placed in jeopardy as alone meriting consideration. (Rec., 31, et seq.) To review that decision, the case is brought here on writ of error.

The assignment of errors (Rec., 38) presents the single question whether the previous conviction of plaintiff in error, in the municipal court of the city of Manila, of violating an ordinance of the city making it an offense to behave in "an indecent manner in any public place open to public view," was a bar to his subsequent trial and conviction in the Court of First Instance under article 257 of the Penal Code.

THE LAW.

(Rec., 32, 33.)

Article 28 of the ordinances of the city of Manila provides:

> SEC. 2. No person shall be drunk or intoxicated or behave in a drunken, boisterous, rude, or *indecent manner in any public place open to public view;* or be drunk or intoxicated or behave in a drunken, boisterous, rude, or indecent manner in any place or premises to the annoyance of another person.

Article 257 of the Penal Code of the Philippines provides:

> The penalty of arresto mayor shall also be imposed on those who outrage, insult, or threaten, by deed or word, public officials or agents of the authorities, in their presence, or in a writing addressed to them.

ARGUMENT.

I.

The two offenses of which plaintiff in error was convicted are, like those considered in *Flemister* v. *United States* (207 U. S., 372), separate and distinct. Consequently, here as there, "it is unnecessary to consider whether the same conduct could be punished at the same time on the same grounds by both the superior and subordinate authorities in the same jurisdiction" (*ib.*, 375).

In its opinion in this case the Supreme Court of the Philippine Islands said (Rec., 33):

> By comparing the alleged offense with [for] which the defendant was punished in the municipal court with the offense charged in the complaint in the present cause, it will be seen that they were separate and entirely distinct offenses. It is possibly true that the offense for which the defendant was convicted in the municipal court resulted from the same acts which constituted the offense for which he was prosecuted in the Court of First Instance, but this court has held that the mere fact that a person is prosecuted twice by different governmental entities for *different* offenses resulting from the same acts does not justify the plea of former jeopardy.

The nature of the offenses must, of course, be determined from the complaints filed against the plaintiff in error (*Burton* v. *United States*, 202 U. S., 380), considered in the light of the statutes under which they were drawn.

The complaint under the municipal ordinance of the city of Manila (Rec., 16) charged that the defendant "wilfully and unlawfully, in a public street car and in the presence of numerous persons, including ladies, conducted himself in a reckless, indecent and discourteous manner." The complaint then set forth the particular acts of the defendant, alleging that they occurred "then and there," that is, in such public place, *but did not allege that the person to whom they were addressed, Capt. Jose Crame, was a public official.*

The information drawn under the Penal Code (Rec., 1) charged the defendant with "calumniating, outraging, and insulting by word of mouth and in his presence, a public official and agent of the authorities in the exercise of his office." It then set forth the specific acts of the defendant, *which, it was charged, were addressed to Capt. Jose Crame, a public official, while engaged in the discharge of the duties of his office.*

In the first case, the gist of the offense, under the statute, was behaving in an indecent manner in a public place open to public view, and the fact that such misbehavior was addressed to a public official was immaterial. In the present case, the conditions were just reversed, the fact of the misbehavior occurring in a public place being immaterial, while the fact that it was addressed to a public official was all important.

It was unnecessary to allege, in the first complaint—and, as stated, that complaint did not allege—that Capt. Jose Crame was a public official. But in the present case, the information necessarily alleged, and the fact was proved at the trial (Rec., 18), that Capt. Jose Crame was a public official. Without the allegation and proof of this fact, there would have been no offense under article 257 of the Penal Code.

The requirement of proof of an additional fact makes the offense distinctive, and precludes a plea of autrefois convict.

Thus, in *Morey* v. *Commonwealth* (108 Mass., 433), quoted with approval in *Carter* v. *McClaughry* (183 U. S., 367, 395), the Supreme Judicial Court of Massachusetts said:

> A conviction or acquittal upon one indictment is no bar to a subsequent conviction and sentence upon another, *unless the evidence required to support a conviction upon one of them would have been sufficient to warrant a conviction upon the other.* The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. *A single act may be an offense against two statutes;* and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other

In *Carter* v. *McClaughry*, supra, this court, referring to the convictions of Capt. Carter under the sixtieth article of war, said (183 U. S., 394):

> The offenses charged under this article were not one and the same offense. This is apparent if the test of the identity of offenses that the same evidence is required to sustain them be applied. The first charge alleged "a conspiracy to defraud," and the second charge alleged "causing false and fraudulent claims to be made," which were separate and distinct offenses, one requiring certain evidence which the other did not. The fact that both charges related to and grew out of one transaction made no difference.

In that case the court further said (p. 395):

> Finally, it is contended on this branch of the case that the offense under Charge III is the same offense as those under Charges I and II, called by a different name, and hence that the punishment of dismissal was illegal because a third punishment where but two offenses were committed.
>
> As heretofore said, dismissal might have been added to fine and imprisonment as part of the punishment, for either or both of the offenses, under the first and second charges.
>
> But the offense of conduct unbecoming an officer and a gentleman is not the same offense as conspiracy to defraud, or the causing of false and fraudulent claims to be made, *although to be guilty of the latter involves being guilty of the former.*

It will be observed that the *Carter case*, in the respect last referred to, is similar to the present, in that the same acts gave rise to two offenses.

In *Burton* v. *United States* (202 U. S., 344), it was held that the defendant could not plead his acquittal upon a charge of having received $500 from one Mahaney, an officer of the Rialto Company, in bar of a prosecution upon the charge of having received such compensation from the company. The court said (p. 380):

> * * * A plea of *autrefois acquit* must be upon a prosecution for the same identical offense. (4 Bl., 336.) It must appear that the offense charged, using the words of Chief Justice Shaw, "was the same *in law* and *in fact*. The plea will be vicious, if the offenses charged in the two indictments be perfectly distinct in point of law, *however nearly they may be connected in fact*." (*Commonwealth* v. *Roby*, 12 Pick., 496, 504.) Looking, as we must, only at the face of the original and the present indictments, the two charges must be regarded as separate and distinct. The plea of former jeopardy in this case presents a technical defense, and can not be allowed for the reason that the offense of which the defendant was heretofore acquitted does not plainly appear, as matter of law, upon the face of the record, to be identical with the one of which he has been convicted in this case. If, at the trial below, under the present indictment, proof had been made that the $500 was paid by Mahaney, and that he was an officer and employee of the

> Rialto Company—if the proof had gone no farther—the jury would not have been authorized to find that the money was received *from the company;* whereas, the same proof would have sustained the charge in the third count of the original indictment. This shows that the two charges were not identical, in law, and that the same evidence would not have sustained each. *It is well settled that "the jeopardy is not the same when the two indictments are so diverse as to preclude the same evidence from sustaining both."* (1 Bishop's Crim. Law, sec. 1051; *Wilson* v. *State*, 24 Connecticut, 57, 63, 64.)

The decisions of other courts are to the same effect. *McIntosh* v. *State* (116 Ga., 543), closely analogous to the case at bar. The defendant having been acquitted in the city court of Savannah of using "obscene and vulgar language in the presence of females on a street car," it was sought to try him upon the charge of having used "opprobrious words and abusive language tending to cause a breach of the peace." The court, in refusing to accept his plea of former jeopardy, said (p. 545):

> * * * One who uses vulgar and obscene language in the presence of a female is guilty of a violation of law, whether that language is used to or of another or not. To constitute the offense of using opprobrious words and abusive language, even where the language used is also obscene and vulgar, it is essential to a conviction that the language must be used to and of another and in his presence. A

> conviction could have been had, under the accusation in the city court, upon evidence which would not have authorized a conviction under the indictment in the superior court. That part of the transaction which could have been properly investigated under the accusation was not necessarily involved in the investigation under the indictment. In that trial it was wholly immaterial whether the language was obscene and vulgar, or whether it was used in the presence of a female. The finding against the plea of former acquittal was proper.

In *State* v. *Taylor* (133 N. C., 755) acquittal of the charge of disorderly conduct under a municipal ordinance was held to be no bar to indictment for assault with a deadly weapon under the law of the State. The court said (pp. 759–760):

> This brings us to the question whether the two prosecutions were for the same *offense*. Ruffin, J., in *State* v. *Nash*, 86 N. C., 651, thus states the law: "To support a plea of former acquittal, it is not sufficient that the two prosecutions should grow out of the same transaction, but they must be for the same offense, *the same both in law and in fact*." "A single act may be an offense against two statutes, and if each requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other." (*State* v. *Stevens*, 114 N. C., 873; *State* v. *Robinson*, 116 N. C., 1046.) Disorderly conduct, of

which it is the duty and province of municipal authorities to take cognizance, may not, and often does not, involve an assault. When it does so the ordinance is directed against the *disorderly conduct* and the law of the State is directed against the breach of the peace. Bleckley, C. J., in *McRea* v. *The Mayor*, 59 Ga., 168, says: "Many transactions which are made penal by the general law of the State may at the same time afford material for a proper police ordinance. The State may deal only with the central element of the transaction, which is fringed all around with adjuncts that ought to be prohibited by ordinances as highly mischievous to the quiet of municipal society."

See also—

Veazy v. *State*, 4 Ga. App., 845.

Blair v. *State*, 81 Ga., 628, 629.

United States v. *Hood*, 26 Fed. Cases, No. 15385.

State v. *Innes*, 53 Me., 536.

People v. *Warren*, 1 Parker Crim., N. Y., 338.

State v. *Stewart*, 11 Oreg., 52.

State v. *Magone*, 33 Oreg., 570.

II.

Grafton v. United States, 206 U. S., 333, distinguished.

It was held in the *Grafton case* that a soldier in the Army who had been acquitted by a military court-martial proceeding, under the authority of the United States, of the crime of homicide in the Philippine Islands, could not subsequently be tried upon the charge of assassination in a civil court of the islands established by like authority.

The grounds upon which the judgment of the court proceeded in that case appear from the following quotation from its opinion (206 U. S., 349–350):

> It was said by the trial judge that the offense *charged* against Grafton in the civil court was "assassination," which offense, he said, was punishable under section 403 of the Philippines Penal Code by death, and of which crime the military court could not, under the Articles of War, have taken cognizance; whereas, the offense for which he was tried by court-martial was only homicide as defined by section 404 of the Penal Code. But if not guilty of homicide as defined in the latter section of the Penal Code—and such was the finding of the court-martial—he could not, for the same acts and under the same evidence, be guilty of assassination as defined in the former section of the Code. Looking at the

matter in another way, the above suggestion by the trial judge could only mean that simply because, speaking generally, the civil court has jurisdiction to try an officer or soldier of the Army for the crime of assassination, it may yet render a judgment by which he could be subjected to punishment for an offense included in the charge of assassination, although of such lesser offense he had been previously acquitted by another court of competent jurisdiction. This view is wholly inadmissible. Upon this general point the Supreme Court of the Philippines, referring to the defense of former jeopardy, said: "The circumstance that the civil trial was for murder, a crime of which courts-martial in time of peace have no jurisdiction, while the prior military trial was for manslaughter only, does not defeat the defense on this theory. The identity of the offenses is determined, not by their grade, but by their nature. One crime may be a constituent part of the other. The criterion is: Does the result of the first prosecution negative the facts charged in the second? It is apparent that it does. The acquittal of the defendant of the charge of manslaughter pronounces him guiltless of facts necessary to constitute murder and admits the plea of jeopardy." The offense, homicide or manslaughter, charged against Grafton was the unlawful killing of a named person. The facts which attended that killing would show the degree of such offense, whether assassination of which the civil court might take cognizance if it acquired jurisdiction before the military court acted, or homicide of which

> the military court could take cognizance if it acted before the civil court did. If tried by the military court for homicide as defined in the Penal Code, and acquitted on that charge, the guaranty of exemption from being twice put in jeopardy of punishment for the same offense would be of no value to the accused, if on a trial for assassination, arising out of the same acts, he could be again punished for the identical offense of which he had been previously acquitted.

In the present case we are concerned with two distinct offenses, and not with two offenses of the same nature differing only in degree. In manslaughter, murder, or assassination under the Penal Code of the Philippines, the basic fact in each case is the unlawful homicide. If, therefore, a person is acquitted or convicted of one of these offenses he can not be tried for either of the others, without putting him twice in jeopardy for the same offense—the homicide.

So, in the case of larceny and robbery, the offenses are essentially the same, differing only in degree; robbery being simply larceny accompanied by aggravating circumstances—acts of violence or putting in fear.

In such cases the lesser offense is necessarily included in the greater, and therefore a conviction or acquittal of the one will preclude a trial for the other (Bishop on Crim. Law, 7th ed., secs. 1054–1057). In the present case this is not so. The difference here is in kind and not simply in degree. The lesser

offense is not necessarily included in the greater. A person may be guilty of acting in an indecent manner in a public place and yet be innocent of outraging a public official, and conversely. As above pointed out, the two offenses require proof of entirely different facts.

The judgment of the Supreme Court of the Philippine Islands should therefore be affirmed.

WILLIAM R. HARR,
Assistant Attorney General.

MARCH, 1911.

O

GAVIERES *v.* UNITED STATES.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 102. Submitted March 13, 1911.—Decided April 3, 1911.

Protection against double jeopardy was by § 5 of the act of July 1, 1902, c. 1369, 32 Stat. 691, carried to the Philippine Islands in the sense and in the meaning which it had obtained under the Constitution and laws of the United States. *Kepner* v. *United States*, 195 U. S. 100.

The protection intended and specifically given is against second jeopardy for the same offense, and where separate offenses arise from the same transaction the protection does not apply.

A single act may be an offense against two statutes, and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution or conviction under the other. *Carter* v. *McClaughry*, 183 U. S. 367.

In this case *held* that one convicted and punished under an ordinance prohibiting drunkenness and rude and boisterous language was not put in second jeopardy by being subsequently tried under another ordinance for insulting a public officer although the latter charge was based on the same conduct and language as the former. They were separate offenses and required separate proof to convict. *Grafton* v. *United States*, 206 U. S. 333, distinguished.

THE facts, which involve the construction of the provisions in the Philippine Island act of July 1, 1902, as to second jeopardy, are stated in the opinion.

Vicente G. Gavieres, plaintiff in error, *pro se:*

The Supreme Court of the Philippine Islands erred in holding that the fact that the plaintiff in error was twice placed in jeopardy by the second indictment was not clearly proven, and it also erred in holding that the plaintiff in error had committed an offense against two government entities and therefore the prosecution by one was not a bar to the prosecution by the other. See *Grafton* v. *United States*, 206 U. S. 333.

The court below also erred in holding that the offenses charged in the two complaints were essentially different in their nature, that they were separate and entirely distinct offenses, and that the same act may constitute a crime against the State and also against the municipality, so that each may punish a person for an infraction of both laws by a single act and that punishment by either does not preclude punishment by the other. *Chan Cun Chay*, 5 Phil. Rep. 385; *Flemister Case*, 5 Phil. Rep. 650.

If these Islands had ceded to the United States certain rights then undoubtedly they might have retained the right to punish all crimes against law regardless of whether

or not the Government of the United States did so or not, but the situation is reversed. These Islands by an act of Congress are protected by the Philippine Bill, which gave certain rights and imposed certain restrictions on the power of the courts, including the prohibition against a man being placed twice in jeopardy for the same offense.

Under this provision there must be two offenses essentially different in their nature in order that two punishments may be inflicted.

Mr. Assistant Attorney General Harr for the United States:

The two offenses of which plaintiff in error was convicted are like those considered in *Flemister* v. *United States*, 207 U. S. 372.

The nature of the offenses must, of course, be determined from the complaints filed against the plaintiff in error, *Burton* v. *United States*, 202 U. S. 380, considered in the light of the statutes under which they were drawn.

The requirement of proof of an additional fact makes the offense distinctive, and precludes a plea of *autrefois convict*. *Morey* v. *Commonwealth*, 108 Massachusetts, 433; *Carter* v. *McClaughry*, 183 U. S. 367, 395.

The decisions of other courts are to the same effect. *McIntosh* v. *State*, 116 Georgia, 543; *State* v. *Taylor*, 133 N. Car. 755. See also *Veazy* v. *State*, 4 Ga. App. 845; *Blair* v. *State*, 81 Georgia, 628, 629; *United States* v. *Hood*, 26 Fed. Cas. No. 15,385; *State* v. *Innes*, 53 Maine, 536; *People* v. *Warren*, 1 Parker, Crim. Rep. N. Y. 338; *State* v. *Stewart*, 11 Oregon, 52; *State* v. *Magone*, 33 Oregon, 570; *Grafton* v. *United States*, 206 U. S. 333, distinguished.

Mr. Justice Day delivered the opinion of the court.

This case presents the single question whether the plaintiff in error, by reason of the proceedings, herein-

after stated, has been twice in jeopardy for the same offense.

Gavieres, plaintiff in error, was charged, convicted and sentenced in the Court of First Instance of the city of Manila, Philippine Islands, of a violation of Article 257 of the penal code of the Philippine Islands, which provides:

"The penalty of arresto mayor shall also be imposed on those who outrage, insult, or threaten, by deed or word, public officials or agents of the authorities, in their presence, or in a writing addressed to them."

Gavieres was charged under this article with the crime of calumniating, outraging and insulting a public official in the exercise of his office by word of mouth and in his presence. Upon conviction he was sentenced to four months of arresto mayor and to pay the cost of the prosecution. He had been previously convicted, because of the same words and conduct, under Art. 28, § 2, of the ordinance of the city of Manila, which provides:

"No person shall be drunk or intoxicated or behave in a drunken, boisterous, rude, or indecent manner in any public place open to public view; or be drunk or intoxicated or behave in a drunken, boisterous, rude, or indecent manner in any place or premises to the annoyance of another person."

Section 5 of the act of Congress of July 1, 1902, 32 Stat., c. 1369, 691, provides: "No person, for the same offense, shall be twice put in jeopardy of punishment."

This statute was before this court in the case of *Kepner* v. *United States*, 195 U. S. 100, and it was there held that the protection against double jeopardy therein provided had, by means of this statute, been carried to the Philippine Islands in the sense and in the meaning which it had obtained under the Constitution and laws of the United States.

It is to be observed that the protection intended and specifically given is against second jeopardy for the *same*

offense. The question, therefore, is, Are the offenses charged, and of which a conviction has been had in the municipal court and in the Court of First Instance, identical. An examination of the ordinance shows that the gist of the offense under it was behaving in an indecent manner in a public place, open to public view. It was not necessary to charge or prove under the municipal ordinance any outrage, insult or threat to a public official or agent of the authorities. The charge contained in the record shows that under the municipal ordinance the plaintiff in error was charged with willfully and unlawfully, in a public street car and in the presence of numerous persons, including ladies, conducting himself in a reckless, indecent and discourteous manner.

It is true that the acts and words of the accused set forth in both charges are the same; but in the second case it was charged, as was essential to conviction, that the misbehavior in deed and words was addressed to a public official. In this view we are of opinion that while the transaction charged is the same in each case, the offenses are different. This was the view taken in *Morey* v. *Commonwealth*, 108 Massachusetts, 433, in which the Supreme Judicial Court of Massachusetts, speaking by Judge Gray, held:

"A conviction or acquittal upon one indictment is no bar to a subsequent conviction and sentence upon another, unless the evidence required to support a conviction upon one of them would have been sufficient to warrant a conviction upon the other. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. A single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other."

This case was cited with approval in *Carter* v. *McClaughry*, 183 U. S. 367, 395. In the *Carter Case*, speaking of the identity of offenses charged, this court said:

"The offenses charged under this article were not one and the same offense. This is apparent if the test of the identity of offenses that the same evidence is required to sustain them be applied. The first charge alleged 'a conspiracy to defraud,' and the second charge alleged 'causing false and fraudulent claims to be made,' which were separate and distinct offenses, one requiring certain evidence which the other did not. The fact that both charges related to and grew out of one transaction made no difference."

In *Burton* v. *United States*, 202 U. S. 344, 381, Bishop's Criminal Law, vol. 1, § 1051, was quoted with approval to the effect "jeopardy is not the same when the two indictments are so diverse as to preclude the same evidence from sustaining both." In that case this court said, speaking of a plea of *autrefois acquit*, "It must appear that the offense charged, using the words of Chief Justice Shaw, 'was the same in law and in fact. The plea will be vicious if the offenses charged in the two indictments be perfectly distinct in point of law, *however nearly they may be connected in fact.*'"

Applying these principles, it is apparent that evidence sufficient for conviction under the first charge would not have convicted under the second indictment. In the second case it was necessary to aver and prove the insult to a public official or agent of the authorities, in his presence or in a writing addressed to him. Without such charge and proof there could have been no conviction in the second case. The requirement of *insult to a public official* was lacking in the first offense. Upon the charge, under the ordinance, it was necessary to show that the offense was committed in a public place open to public view; the insult to a public official need only be in his

presence or addressed to him in writing. Each offense required proof of a fact, which the other did not. Consequently a conviction of one would not bar a prosecution for the other.

A minority of the Supreme Court of the Philippine Islands was of opinion that there was double jeopardy in the case at bar upon the authority of the case of *Grafton* v. *United States*, 206 U. S. 333. In that case the Supreme Court of the Philippine Islands held that a soldier of the United States Army might be prosecuted for homicide before a military court-martial and also before a civil court exercising authority in the islands. That judgment was reversed and the conviction before the military court-martial held to bar a prosecution for the same homicide in the civil courts of the Philippine Islands. It appeared that Grafton had been acquitted of the unlawful homicide of a Filipino by a duly convened court-martial having jurisdiction of the offense. After acquittal he was charged in the Court of First Instance of the Province of Iloilo with the crime of assassination in committing the same homicide. He was convicted, notwithstanding his plea of former jeopardy, of infraction of article 404 of the penal code, of the crime of homicide in killing the Filipino.

This court held that the court-martial had full jurisdiction to try the accused for the offense; that it derived its authority from the same governmental power as did the civil court in the Philippine Islands, and that if the conviction in the civil court were allowed to stand the accused would be for the second time in jeopardy for the same homicide. Mr. Justice Harlan, delivering the opinion of the court, said:

"But passing by all other questions discussed by counsel or which might arise on the record, and restricting our decision to the above question of double jeopardy, we adjudge that, consistently with the above act of 1902 and for the reasons stated, the plaintiff in error, a soldier

in the army, having been acquitted of the crime of homicide, alleged to have been committed by him in the Philippines, by a military court of competent jurisdiction, proceeding under the authority of the United States, could not be subsequently tried for the same offense in a civil court exercising authority in that territory."

In the case at bar the offense of insult to a public official, covered by the section of the Philippine code, was not within the terms of the offense or prosecution under the ordinance. While it is true that the conduct of the accused was one and the same, two offenses resulted, each of which had an element not embraced in the other.

The judgment of the Supreme Court of the Philippine Islands is affirmed.

Affirmed.

Dissenting, MR. JUSTICE HARLAN.